

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2024-000122

U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G, Appellant,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association, Defendants,
of which Jamie Singleton is the Respondent.

RECORD ON APPEAL

Volume 4 of 6

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Case No.: 2011-CP-18-00871

Jamie Singleton and Indigo Pointe Homeowners' Association,

Of Whom Jamie Singleton is the Respondent,

v.

U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G,

Appellant.

NOTICE OF APPEAL

U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G appeals the following four (4) orders of the Honorable James E. Chellis:

1. December 12, 2023 order denying foreclosure and granting judgment on the note;
2. December 29, 2023 (SCRCP Rule 59 Order) order granting in part and denying in part plaintiff's motion to amend December 12, 2023 order (Appellant received written notice of entry of the December 29, 2023 order on December 29, 2023);
3. March 28, 2023 Form 4 order setting aside the November 21, 2022 order, and finding plaintiff's motion to amend the order moot; and,
4. November 21, 2022 order granting plaintiff's motion for summary judgment.

January 29, 2024

s/ Dean A. Hayes

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT
COURT OF COMMON PLEAS
IN THE EQUITY DIVISION

C/A No.: 2011-CP-18-00871

U.S. Bank Trust NA as Trustee for Waterfall
Victoria Grantor Trust II, Series G
Plaintiff,

**ORDER DENYING FOECLOSURE
and
GRANTING JUDGEMENT ON THE
NOTE**

v.

Jamie Singleton and Indigo Pointe
Homeowners' Association,
Defendant(s).

Presiding Judge: James E. Chellis
Master in Equity, Dorchester County
Trial Conducted on

Monday, June 12, 2023

10:02 a.m. - 4:43 p.m.

Tuesday, June 13, 2023

10:08 a.m. - 4:41 p.m.

Wednesday, June 14, 2023

9:02 a.m. - 3:39 p.m.

APPEARANCES:

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INTRODUCTION

On July 8, 2012, the Clerk of Court for Dorchester County referred this matter to this Court pursuant to Rule 53 SCRPC. The Order of Reference provides for this Court to take testimony and to direct entry of final judgment in this action under Rule 53(b) SCRPC and all matters arising from or reasonably related to such action. Once referred, this Court shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. Rule 53(c). Also, any appeal from this Order shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. SCRPC 53(d).

This case involves a contested foreclosure lawsuit. The history of the filings in this case demonstrates just how contentious the case has been. On several occasions the case was scheduled for trial but was delayed by either the endorsement of the defaulted note to another entity or its servicing entity changed. The Plaintiff is the fifth substituted party-plaintiff. Multiple lawyers from different law firms have represented the Plaintiff's predecessors. The Defendant, who filed a timely answer¹, has been represented by a member of the Dorchester County Bar, who very early in the litigation recognized the need to engage co-counsel. As with most complex cases, the facts presented reduce the case to relatively simple application of law to the facts as presented. Since Plaintiff seeks foreclosure of a mortgage, it properly came before this Court in its due course at the pleading stage².

¹ The Defendant initially sought dismissal. Upon denial of that Motion, he filed his answer, which was once amended.

² At the outset of the case, the Honorable Maite' Murphy held the position of Master in Equity for Dorchester County. On July 1, 2013, I was appointed to this Court. Since that appointment, I have been appointed for 2 successive terms. Thus, I've had the honor and privilege of serving as Master in Equity for Dorchester County since July 1, 2013.

The trial of this case occurred over a three day period. From the testimony of Plaintiff's witness, Giovanni Amaya, and the testimony of the Defendant, whom Plaintiff called in its case in chief, together with the documentary evidence presented, this Court makes the following findings of fact. After extensively deliberating over the facts, as this Order will bear out, this Court made conclusions of law consistent with those facts. Since foreclosure actions sound in equity, this Court considered applicable law and maxims and principals of equity to come to a just decision supported by the facts as they were presented. In sum, the Plaintiff produced loads of evidence in support of its position. But for the reasons explained in this Order, the Plaintiff did not produce sufficient evidence on many facts resulting in a failure to persuade this Court with sufficient evidence to sway it to award much of its claim.

Findings of Fact

1. Plaintiff called Giovanni Amaya as its only friendly witness. Plaintiff did call the Defendant, as an adverse witness.
2. Mr. Amaya is a Second Assistant Vice President of Default Management for Specialized Loan Servicing (SLS). 12/23³.
3. Mr. Amaya's described his job duties to "include review of business records on loans that are in default. I am also a records custodian, and I will go and verify the possession of original documents. I am a -- I have execution authority and will execute documents on -- case-by-case [sic, basis,] if there's anything that needs to be signed either by SLS for SLS, or by SLS for any of the investors that we service for. That's the majority of it, but I also communicate with counsel, pull business records for counsel, and provide them to counsel whenever needed on any lega- -- litigating matters before or after litigation begins." 13/10-24
4. SLS began servicing the loan in December 2022. 17/22
5. A loan servicer maintains a loan. This includes communication with borrowers, whether telephonic, written, sending and receiving letters, sending and receiving payments, tracking the debits and credits applied on loans, maintaining the business records or original collateral files in safe locations. The overall day-to-day maintenance of a loan. 15/1-10
6. Mr. Amaya states he is familiar with the Defendant's loan. 17/21

³ References to the Transcript represented as "page number/line number." Here, transcript page 12, line 23.

7. Mr. Amaya states the SLS business records include “anything that is incorporated to [sic, into] our business record from prior servicers.” 17/25

8. Mr. Amaya’s testimony did not specify what records from prior servicers SLS had except the account records of SLS. Mr. Amaya’s testimony did include references to many records related to the loan, including the Adjustable Rate Note, 8 endorsements of the Note, the Mortgage, five assignments of record in Dorchester County, and two account statements, all of which will be discussed below.

9. Statebridge serviced the loan prior to SLS. 16/25

10. The Plaintiff received all prior servicers’ information. 236/22-24

11. The Plaintiff, however, did not produce all prior servicers records for trial. 239/11-13

12. The Plaintiff produced insufficient evidence authorizing any agent to sign any documents on behalf of any holder of the Note or the Mortgage. 245/18

13. Plaintiff did not produce any contractual arrangements between the various holders of the Note or any contractual arrangements between any holder of the Note or its servicers. This failure to produce sufficient evidence of this kind has significance relative to the Court’s finding that the Mortgage remains with the bankruptcy estate of the original lender. This issue is discussed in detail below.

The Mortgage

14. The Defendant granted a mortgage lien on Lot 69, shown on a plat of Indigo Pointe at Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina. The mortgage lien is further identified, as follows:

- a. The mortgage is recorded in the Register of Deeds for Dorchester County (ROD) in Book 5142, at page 168.
- b. The mortgage is dated January 4, 2006.
- c. The mortgage was recorded January 12, 2006.
- d. The mortgage is signed by Jamie Singleton, before two witnesses.
- e. The mortgage grants a lien upon the real property described as:

All that certain piece, parcel or lot of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South

Carolina and shown and designated as Lot 69, on a Plat of Indigo Point At Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina, prepared by Trico Engineering Consultants, Inc., on February 1, 1999, revised February 16, 1999 and recorded in the RMC Office for Dorchester County on March 15, 1999 in Plat Book J at Page 128. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Jamie Singleton by deed of James D. Wilson dated January 4, 2006 and recorded January 12, 2006 in Book 5142 at Page 165⁴ in the Office of the Register of Mesne Conveyance for Dorchester County.

- f. The real property's address is 5505 Rowsham Place, North Charleston, SC 29418
- g. The mortgage lien is granted to Mortgage Electronic Registration Systems, as nominee for People's Choice Home Loans, Inc.

Exhibit 1⁵

15. Plaintiff produced no evidence of the relationship between People's Choice Home Loans, Inc., and Mortgage Electronic Registration Systems. Hence, this Court has no evidence from which to adjudge the power or authority of Mortgage Electronic Registration Systems (MERS) to act in any manner on behalf of People's Choice Home Loans, Inc. The Court notes this here to foreshadow the purported assignment by MERS of the Note and Mortgage discussed below.

16. Mortgage Electronic Registration Systems is "nominee of People's Choice Home Loans, Inc." Exhibit 1, Definitions, (C).

17. People's Choice Home Loan filed for bankruptcy March 20, 2007. SCRE 201(b)(2) 262/14

18. Upon People's Choice Home Loans, Inc., filing of its bankruptcy MERS had no authority to take any action on behalf of the Debtor, People's Choice Home Loans, Inc.

Analysis of Mortgage Assignments

19. Exhibit 2 is the First of Five purported Mortgage Assignments.

⁴ The conveyance cites the consideration as \$265,000.00.

⁵ The term Exhibit means Plaintiff's Exhibits unless I designate the Exhibit as a Defendant's Exhibit.

20. By reference to Exhibit 2, the Court finds the following facts:
 - a. Mortgage Electronic Registration Systems (MERS), as nominee, for People's choice Home Loans, Inc., purports to assign the Mortgage, together with the Note. Court's Emphasis. (*Infra*, Exhibit 7)
 - b. The purported assignment is dated July 14, 2008.
 - c. The purported assignee is to GMAC Mortgage, LLC.
 - d. The purported assignment is recorded in the ROD in Book 6727, at page 331.
 - e. The purported assignment was recorded on July 22, 2008.
 - f. Plaintiff produced no evidence MERS had authority to assign the Mortgage, together with the Note after the Lender (People's Choice Home Loans, Inc.) filed bankruptcy. Court's Emphasis. 270/14
21. Plaintiff produced no evidence that Notice of the Assignment had been given to the Defendant as required under Paragraph 20 of the Mortgage.
22. GMAC purportedly held the Note and Mortgage until August 31, 2011. Cf., Exhibit 16 analysis below.
23. Exhibit 3 is the Second of Five purported Mortgage Assignments.
24. By reference to Exhibit 3, this Court finds the following facts:
 - a. GMAC Mortgage, LLC., purports to assign the Mortgage (Exhibit 1).
 - b. The purported assignment is dated August 31, 2011.
 - c. The purported assignee is to 50 by 50 REO, LLC, c/o AMS Servicing, LLC⁶.
 - d. The purported assignment is recorded in the ROD in Book 8010, at page 231.
 - e. The purported assignment was recorded on September 14, 2011.
 - f. Plaintiff produced no evidence of the authority of the signatory to the assignment, Exhibit 3.
25. Plaintiff produced no evidence that Notice of the Assignment to 50 by 50 REO, LLC, had been given to the Defendant as required under Paragraph 20 of the Mortgage.
26. On Father's Day of June 2012, a kitchen fire damaged Defendant's real property. 588/ 24-589/9

⁶ Plaintiff produced no evidence from this servicer.

27. The Mortgage states, Borrower shall keep the improvements now existing or hereafter directed on the property insured against loss by fire, . . . 45/5-7 Paragraph 5, Exhibit 1.

28. Defendant paid the insurance premium for the period that covered the risk of fire at the time of the fire⁷. 570/5

29. Defendant filed a claim with Liberty Mutual. 589/13

30. Defendant gave prompt notice of the claim to the loan servicer at that time, AMS. 589/17

31. Defendant, AMS⁸, and the Liberty Mutual settled the insurance claim after which Defendant and his wife endorsed the claims proceeds check and sent it to AMS via Mr. Sloan.

32. AMS did not return the proceeds to Defendant or pay the proceeds to Defendant's contractor. 590/21

33. Mr. Singleton had no agreement with the holder of the Note or its servicer for the proceeds to be used to pay the Note payments⁹. 591/2

34. October 2, 2012, Rogers, Townsend, Thomas¹⁰ filed Exhibit 4 with the ROD. The document is in proper form. The document is filed in Book 8483, pages 135 through 136.

35. Exhibit 4 is the Third of Five purported Assignments of the Mortgage.

36. By reference to Exhibit 4, this Court finds the following facts:

- a. 50 By 50 REO, LLC, purports to assign the Mortgage (Exhibit 1).
- b. The purported assignment is dated September 24, 2012.
- c. The purported assignee is U.S. Bank NA, as Trustee for the FRT 2011-1 Trust, c/o AMS Servicing, LLC.
- d. The purported assignment is recorded in the ROD in Book 8483, at page 136.

⁸ AMS is a loan servicer. See, Paragraph 34 (g). Plaintiff did not provide the loan servicing history of AMS in its case in chief. Plaintiff's failure to provide all of the loan servicers records is addressed below.

⁹ The application of the insurance proceeds will be addressed below.

¹⁰ A lawyer with this firm initiated the lawsuit. 6 different lawyers from this one firm made appearances in this case. The clerk of court's file shows that different lawyers from at least 3 other law firms made appearances for Plaintiffs in this case. Very early in my oversight of this case (hearing on Defendant's Motion for Summary Judgment, 2014), I sternly admonished the Plaintiff, through its counsel at the time, that the assignments of the mortgage during the pendency of a contested foreclosure action significantly hinders judicial economy. Moreover, as the case demonstrates, it also detrimentally affects the efficiency of trial counsel for both parties and is particularly unfair to the Defendant.

- e. The purported assignment was recorded on October 2, 2012.
- 37. Plaintiff produced no evidence of the authority of the signatory to the assignment, Exhibit 4.
- 38. Plaintiff produced no evidence that Notice of the Assignment to U.S. Bank NA, as Trustee for the FRT 2011-1 Trust, had been given to the Defendant as required under Paragraph 20 of the Mortgage.
- 39. On March 7, 2016, Rogers, Townsend, & Thomas filed Exhibit 5 with the ROD. The document is in proper form. Exhibit 5 is filed in the ROD in Book 10126, at pages 197 through 199.
- 40. Exhibit 5 is the Fourth purported Assignment of the Mortgage.
- 41. By Reference to Exhibit 5, the Court makes the following findings:
 - a. U.S. Bank NA, as Trustee of the FRT 2011- Trust, purports to assign the Mortgage (Exhibit 1).
 - b. The purported assignment is dated February 8, 2016.
 - c. The purported assignee is the trust "Wilmington Savings Fund Soc for NNPL Trust Series 2012-1."
 - d. The purported assignment is recorded in the ROD in Book 10126, at page 198
 - g. The purported assignment was recorded on March 7, 2016. Exhibit 5
- 42. Plaintiff produced no evidence of the authority of the signatory to the assignment, Exhibit 5.
- 43. Notably, this purported assignment is not to a Trustee of Wilmington Savings Fund Soc for NNPL Trust Series 2012-1.
- 44. Plaintiff produced no evidence that Notice of the Assignment to Wilmington Savings Fund Soc for NNPL Trust Series 2012-1 had been given to the Defendant as required under Paragraph 20 of the Mortgage.
- 45. On February 4, 2020, Plaintiff's counsel of McMichael Taylor Gray, LLC from Peachtree Corners, Ga., filed Exhibit 6 with the ROD. The document is in proper form. The document is filed in the ROD in Book 12313, at pages 75.
- 46. Exhibit 6 is the Fifth of Five purported Assignments of the Mortgage.

47. By Reference to Exhibit 6, the Court makes the following findings:
- a. Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity, but solely in its capacity as Certified Trustee for NNPL Trust Series 2012-1 a/k/a Wilmington Savings Fund Soc for NNPL Trust Securities 2012-1 purports to assign the Mortgage (Exhibit 1).
 - b. The purported assignment is dated February 8, 2016 (the Court notes this trustee had never received the assignment).
 - c. The purported assignee is U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G.
 - d. The purported assignment is recorded in the ROD in Book 12313, at pages 75.
 - e. The purported assignment was recorded on March 7, 2016.
48. Plaintiff did not produce sufficient evidence to establish the authority of the signatory Exhibits 6.
49. Plaintiff produced no evidence that Notice of the Assignment to U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G had been given to the Defendant as required under Paragraph 20 of the Mortgage.
50. From March 20, 2007, until July 14, 2018, the provenance of the Note is unclear from the trial record. (See, *infra*, Paragraphs 59-155).
51. Plaintiff produced no evidence when the Note was sold initially by People's Choice Home Loan. 260/1213
52. Plaintiff presented no evidence of an endorsement of the Note dated prior to March 20, 2007, the date People's Choice Home Loans, Inc., filed bankruptcy.
53. Plaintiff presented no evidence of an assignment of the Mortgage dated prior to March 20, 2007, the date People's Choice Home Loans, Inc., filed bankruptcy.
54. The Mortgage is subject to Applicable Law. Applicable Law means all controlling applicable federal, state, and local statutes, regulations, ordinances, and administrative role -- rules, and others that have the effect of law, as well as all applicable final, non-appealable judicial opinions. 27/8-11

55. The Court gave both parties 30 days to supplement the record with specific documents in the People’s Choice Home Loan, Inc., bankruptcy proceedings to which the Court would take judicial notice. Each party were to send the documents to the Court, the Court Reporter, and each other. 460/14

56. Neither party provided this Court with any specific documents pertaining to People’s Choice Home Loans, Inc., bankruptcy proceedings.

57. The Court finds the Mortgage remains in the Bankruptcy Estate of People’s Choice Home Loan, Inc.

58. Hence, each of the purported five assignments of the Mortgage have no force or affect. Notwithstanding, Plaintiff and its predecessors use of the mortgage and its terms will be further examined to evaluate Plaintiff’s credibility. The Court also uses this evidence to examine Plaintiff’s conduct under the “clean hands” doctrine.

Analysis of the Note

59. Plaintiff states Exhibit 7 is “the original note in question.” 78/20 (Court’s emphasis, hereinafter the Note). The Note is a promissory note:

- a. People’s Choice Home Loans, Inc., is the Lender. 79/7
- b. The Note identifies the borrower as Jamie Singleton. 79/9
- c. The execution date is January 4, 2006. 79/12
- d. The principal amount is \$212,000.00. 79/16
- e. The loan number is 10281247. 79/22
- f. The initial interest rate of the Note is 10.45%. 80/12
- g. The Note is an “Adjustable-Rate Note.”
- h. The Note is signed. 80/13-14

60. This Court admitted Exhibit 7 pursuant to SCRE 902 (9). 80/19-20

61. Mr. Amaya states “SLS obtained the Note” when the service transferred through the possession of SLS’ custodian. Court’s emphasis¹¹. 80/4

¹¹ I am aware that servicers have standing to bring a foreclosure action. Nonetheless, the servicer is not a holder of a note. When a servicer speaks of possession of the note in a contested foreclosure case, it is not clear the servicer is meaning possession for purposes of servicing or possession as the holder. The lack of clarity is troublesome. Nonetheless, I have accepted these Mr. Amaya’s testimony as statements by the Plaintiff as servicer.

62. Mr. Amaya states the custodian was Mr. Hayes' law firm. 83/23-24

63. The Court addresses custodian issues below.

64. A signature is placed on a line above the typed name, JAMIE SINGLETON, -
Borrower. Page 4 of 4 of Exhibit 7

65. The INTEREST provision of the Note states "Interest will be charged on the unpaid principal until the full amount of the Principal has been paid. I [borrower] will pay interest at the yearly rate of 10.45%. The interest Rate I will pay may change in accordance with Section 4 of this Note."

66. Section 4 of the Note provides that the interest rate and monthly payments change over the course of time the Note remains outstanding. Hence, the Note is an adjustable rate note as explained in the next paragraph.

67. The interest rate is the sum of 6% plus the index rate. The index is the LIBOR¹² rate published in the Wall Street Journal (WSJ). The first change is on the anniversary of the Note, thereafter the rate adjusts every six months, by adding 6% to the LIBOR rate published in the WSJ 45 days prior to the change date. At the first change date, the interest rate is capped at 13.45% or by 3% points. At each change date thereafter the interest rate cannot increase more than 1% point. Over the life of the loan the interest rate cannot exceed 16.45% per annum. Essentially the interest rate is capped at 6% above the initial interest rate. But the interest rate shall never be less than 10.45% per annum. Section 4, Exhibit 7.

68. The Plaintiff did not produce sufficient evidence of the LIBOR rate 45 days before each change date. As such the interest rate calculations throughout the limited records produced result in a finding that the interest rate accruing on the loan, and ultimately claimed by

¹² The average of interbank produced rates for six month U.S. dollar-denominated deposits in the London Market. As broadly reported, the LIBOR rate came under significant scrutiny in 2008. Ultimately criminal investigations were launch that led to massive fines. See, <https://www.imf.org/external/pubs/ft/fandd/basics/54-london-interbank-produced-rate.htm> LIBOR expired on June 30, 2023, as part of a transition that has been planned for several years. <https://www.consumerfinance.gov/about-us/blog/adjustable-rate-loans-are-changing-widely-used-interest-rate-index-expires-in-june/>. On July, 25, 2023, I issued an Order on Defendant's Motion for a New Trial, granting Defendant the limited right to submit an affidavit regarding a letter he received after the trial from Plaintiff's servicer, SLS, giving notice of a rate change to the Note. The Order also gave Plaintiff the right to file a counter-affidavit. The rate change notice did not provide the index upon which the rate change was based. This evidence is simply not sufficient evidence as it fails credibility. Moreover, it is not persuasive of the actual unliquidated calculation upon which the interest rate is determined.

the Plaintiff, results in Plaintiff’s failure to produce sufficient evidence to prove the interest due on the loan. Since Plaintiff did not produce sufficient evidence, the Court finds the Plaintiff did not produce sufficient evidence to persuade the Court of the interest due on the loan.

69. Mr. Amaya testified by “best recollection” the Note “was requested and sent” to a law firm at the time of the initial Complaint. He then testifies at page 285, as follows:

6 . . . Then there was a transfer to
7 another law firm, I believe at that point it
8 was supposed to be transferred again to a
9 different law firm, where it could not be
10 found. And then it was located again and
11 returned to, if I’m not mistaken, it was the
12 custodian -- no, the collector, the individual
13 that was hired to find the document or track
14 the collateral that then sent it back to
15 counsel and it ended up at the current law firm
16 as our custodial -- as our current custodian,
17 who they brought in here for -- for trial, as
18 a custodian for the plaintiff and as the law
19 firm [the Court’s emphasis].

70. Mr. Amaya delivered this answer hesitatingly, and in short phrases that the written transcript does not show. Mr. Amaya, hedges his response with indefinite pronouns, “there” and “it”; he uses passive verb tense, as in “was supposed”, “was a transfer”, “was located”, “was hired”; he qualifies his answer with “I believe”, “if I’m not mistaken”; and he fails to provide decisive descriptions for “custodian”, collector”, “individual”, and even “our current law firm.” Mr. Amaya merely believes Plaintiff holds the Note. This recitation of the provenance of the Note arouses the suspicion of this Court as to the authenticity of the Note purported to be held by the Plaintiff through SLS.

Factual Analysis of Suspicion of the Authenticity of the Note

71. The Note was lost and then purportedly found. 287/9-12

72. Plaintiff could not identify the entity that had possession of the Note, in its original form, when it was lost. 287/21-25

73. Plaintiff produced no evidence of the circumstances as to how, where, and when the loss of the Note occurred. 288/11-15

74. Plaintiff relies solely on the testimony of Mr. Amaya to establish the Note was found but produced insufficient evidence of who found it. 289/13-17

75. Plaintiff produced no documentary evidence to support the Note was found by the Plaintiff or its servicer.

76. Mr. Singleton stated he did not know if Exhibit 7 was the original note. 474/25

77. Mr. Singleton states he reviewed a note in Florida. 475/13

78. Mr. Singleton states that the note produced for him to review in Florida, “does not look like what [Exhibit 7] I’m looking at now.”

79. Mr. Singleton states the signature on the Mortgage (Exhibit 1) is his signature. 498/5

80. Mr. Singleton states he cannot be 100% certain that the signature on Exhibit 7 is the note he originally signed. 501/5-7

81. Mr. Singleton compared his signature on the Mortgage (Exhibit 2) to the signature on Exhibit 7. Mr. Singleton states he cannot be 100% certain it is the same signature.

82. Mr. Singleton states the document he viewed in Florida¹³ as the note “looked just like you would print off on regular white paper. No age at all on that document. Not at all.” 598/8-10

83. Mr. Singleton stated he did not see a stamp on the note presented to him in Florida to review.

84. Mr. Singleton states the note he viewed in Florida was different in terms of signs of wear and tear, punch holes, tears and paper quality than the Note (Exhibit 7). 599/11-12

85. The copy of the note on Exhibit 32 does not have the stamped blank endorsement. 600/5

¹³ After February 8, 2022. See Order dated February 8, 2022.

86. Exhibit 41, which was marked for identification, has a copy of a note as Exhibit 1. Mr. Singleton stated it does not have a stamped endorsement in blank on it. 600/23

87. Mr. Amaya stated SLS obtained the Adjustable-Rate Note “[w]hen the service transferred through the possession of our custodian.”

Analysis of Endorsements to the Note

88. On the back of the 4th page of the Note is a rubber hand-stamped endorsement that states, “Pay to the Order _____ without recourse. Peoples’ Choice Home Loans, Inc., a Wyoming Corporation by [a signature] on a signature line above the name Dana Lantry, Title: Asst. Vice President.” SCRE 801 (9). Exhibit 7.1

89. The endorsement in blank is not dated. Exhibit 7.1

90. Plaintiff produced no evidence of the authority by which the signatory executed the endorsement.

91. The Plaintiff produced no evidence of the authority in general of a Title Assistant Vice President working for People's Choice Home Loan, Inc.

92. Plaintiff produced no evidence of delivery of the Note pursuant to the Exhibit 7.1 endorsement to a bearer.

93. Plaintiff produced no documentary evidence of the person or entity that held possession of the Note with the blank endorsement.

94. The Plaintiff admits Exhibit 7.1:

- a. Is not dated,
- b. Is not witnessed,
- c. Has no notary jurat; 291/ 3-8

95. Plaintiff produced no evidence of the time when the blank endorsement stamp was placed on the Note or when the blank endorsement was signed.

96. Exhibits 7.1 through Exhibit 13 were admitted into evidence pursuant to SCRE 902(9).

97. Exhibit 8 is an “Allonge to Note.” This attached document purports to endorse the Note, as follows: “pays to the order of 50 by 50 REO, LLC. Without recourse and without representation or warranty except as set forth in that certain assignment of note and mortgage

dated of even -- even date herewith for -- from Jamie Singleton in favor of GMAC Mortgage, LLC. . . Without recourse and without representation or warranty except as set forth in that certain Assignment of Note and Mortgage dated of even date herewith from Jamie Singleton in favor of 50 by 50 REO, LLC.” 100/17-21.

98. By reference to Exhibit 3, August 11, 2011, is the date of the purported endorsement. Exhibit 8 is dated, Hence, of “even date,” with Exhibit 3 is August 11, 2011. See, paragraph 22 b., above.

99. Plaintiff admits Exhibit 8:

- a. Has no Notary Jurat;
- b. Has no date as to when it was created;
- c. “Signed in the presence of,” GMAC Mortgage, LLC, infers the endorsement is signed in the presence of a witness.
- d. No witness signed the endorsement.

100. A third purported endorsement of the Note by Allonge of 50 by 50 REO, LLC states “Pay to the order of US Bank, N.A. as Trustee of the FRT 2011-1 Trust.” 107/5-6. Exhibit 9.

101. Plaintiff admits it does not know the date the Allonge to Note [Exhibit 9] was created or attached to the Note. 276/13-14. 293/3-4

102. Plaintiff admits Exhibit 9

- a. Has no Notary Jurat;
- b. “Signed in the presence of,” 50 by 50 REO, LLC, infers the endorsement is signed in the presence of a witness.
- c. No witness signed the endorsement. 292/22-25

103. On September 24, 2012, 50 By 50 REO, LLC, signed an Assignment of Mortgage to US Bank, N.A. as Trustee of the FRT 2011-1 Trust. Exhibit 4.

104. Plaintiff admits this assignment (Exhibit 4) does not include “language specifically assigning the [N]ote.” 274/17-18.

105. A fourth purported endorsement of the Note by Allonge of US Bank, N.A. as Trustee of the FRT 2011-1 Trust states, “pay to the order of FRT 2013-1 Investor LLC, without recourse.” Exhibit 10. 107/14-15.

106. Exhibit 10 is dated 4th day of September 2014.

107. A fifth purported endorsement of the Note by Allonge of FRT 2013-1 Investor LLC states, “Pay to the order of _____, without recourse” 111/10-11. Exhibit 11.

108. On February 8, 2016, US Bank, NA, as Trustee of FRT 2011-1 Trust purports to assign the Mortgage (Exhibit 7) together with the Note (Exhibit 2) to Wilmington Savings Fund Soc for NNPL Trust Series 2012-1. 274/10. Exhibit 5.

109. Plaintiff admits that the Exhibit 5 “transfer is not a physical kind.” 278/15.

110. Plaintiff states Exhibit 5 is “a transfer of indebtedness.” 278/16

111. Plaintiff fails to establish Exhibit 5 operated to transfer the Note from its then purported holder, US Bank, NA, as Trustee of FRT 2011-1 Trust, to the purported holder, Wilmington Savings Fund Soc for NNPL Trust Series 2012-1. 278/20-21. 279/10.

112. Exhibit 5 fails to transfer the Note or the Mortgage to a Trustee of Wilmington Savings Fund Soc for NNPL Trust Series 2012-1. 280/6-11 (Court’s Emphasis). See paragraph 124 below.

113. Exhibit 6 fails to transfer the Note or the Mortgage because the Trustee of Wilmington Savings Fund Soc for NNPL Trust Series 2012-1 never had any right, title or interest in the Note or the Mortgage. 280/12-19

114. Plaintiff fails to establish Exhibit 6 operated to transfer the Note from its then purported holder, Wilmington Savings Fund Soc for NNPL Trust Series 2012-1, to the purported holder the Plaintiff. 281/19-283/4

115. Plaintiff admits the Note was lost. 286/2-4

116. Plaintiff admits it knows what a lost Note affidavit is. 286/7

117. Plaintiff’s witness claims the scope of his review did not include searching for a lost note affidavit. 286/11

118. When asked if a lost note affidavit is in the file, Mr. Amaya, states: "It would -- I'm not saying it's not in there, I personally did not pull it and I don't want to perjure myself to say it is or isn't if I have not personally reviewed it."

119. A Lost Note Affidavit is in the file of the Plaintiff or its servicer. 287/10-12

120. Plaintiff admits it cannot sell what it does not own. 298/4

121. Plaintiff's witness admits Exhibits 11 and 12 purport to be Allonges to Note that purport to endorse the Note to two different entities.

122. Exhibit 11 purports to be an Allonge to Note:

- a. Endorsing the Note in blank; 298/11
- b. Is dated September 4, 2014; 298/14
- c. Signed by an authorized signatory of FRT 2013-1 Investor, LLC. 298/11 Exhibit 11

123. Exhibit 12 purports to be an Allonge to Note:

- a. Is not dated;
- b. Identifies the Borrower as Jamie Singleton;
- c. Identifies the property address as 5505 Rowsham Place, North Charleston, SC;
- d. Endorses the Note to Waterfall Victoria Grantor Trust II, Series G;
- e. Identifies the Loan WAM ID: 109010289 and by SMS ID: 578125938 neither of which identifying numbers correspond to any loan number on the Note nor did Plaintiff offer any evidence to explain this anomaly;
- f. Identifies Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 by New Penn Financial d/b/a Shellpoint Mortgage Servicing as attorney in fact as assignee; and
- g. Is attached to the Note (Exhibit 7) between Exhibit 11 and Exhibit 13. Exhibit 7 and 7.1 with attachments Exhibits 8 – 13.

124. The endorsement is not to a Trustee of Waterfall Victoria Grantor Trust II, Series G. (Court's Emphasis). (1) The extent of the capacity of a corporation to take and hold property in trust is the same as that of a natural person except as limited by law. (2) The extent of the

capacity of a corporation to administer a trust depends upon the extent of the powers conferred upon it by law. Restatement (Second) of Trusts § 96 (1959)

125. Plaintiff claims it is a holder of the Note (But, Mr. Amaya testified, “My business records show an assignment of mortgage, and I did review Waterfall, and I did call Waterfall for their sales agreement, Purchase and Sales Agreement, which they provided to me to show that they’re the current owners and holders, so they would’ve been the last ones to have possession of it, and not this final one.”). 300/21-301/3

126. Exhibit 13 purports to be an Allonge to Note

- a. Is not dated;
- b. Identifies the Borrower as Jamie Singleton;
- c. Identifies the property address as 5505 Rowsham Pl;
- d. Identifies the loan as loan # 555850755;
 - i. Endorsing the Note
 - ii. To the Order of WestVue NPL Trust II;
- e. Is signed by Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-34;

127. The endorsement is not to a Trustee of WestVue NPL Trust II.

128. Plaintiff admits the signature line states Cynthia M Brock on both Exhibit 12 and Exhibit 13 and that the signatures “look different.” 301/25 Exhibit 11 and Exhibit 12

129. The chain of endorsements are defect.

Court’s Physical Examination of the Exhibits 7 through 14

130. Exhibits 7 shows a loan number in typed print as Loan Number: 10281247

131. Exhibit 7 has three alterations in handwriting showing 3 different numbers.

132. The Plaintiff did not produce sufficient evidence to explain the basis for alteration of the Note.

133. The hand-written alterations are not reliable as they do not provide sufficient identifying information as to who placed the alteration on the Note, and the date the alteration was put on the Note (Exhibit 7).

134. Exhibit 7 on visual and tactile examination by this Court has multiple staple holes in it at the top left-hand corner inferring the Note and its attached purported allonges have been stapled, unfastened and stapled together multiple times.

135. Plaintiff did not produce sufficient evidence to explain the reason the Note had been disassembled and reassembled multiple times. This together with the undated endorsements raises the question of whether some of the allonges are chronologically not in correct order.

Plaintiff's Bailee Documentary Evidence

136. Plaintiff's Exhibit 14 is a two-page document.
- Page one is letterhead of "Crawford & von Kellar," dated April 20, 2018.
 - It references Wilmington Savings Bank v Jamie Singleton, Case No.: 2011CP1800871, the case number of the present lawsuit.
 - The letter states "Enclosed please find the original note, mortgage, and CD from Rogers, Townsend & Thomas." Below the signature of a paralegal from Crawford & von Kellar is a receipt that states: "I confirm that Crawford & von Kellar has released the original note, mortgage and CD to our office[sic] and it is now in our possession."
 - A signature line follows above which is a signature and below which is handwritten, "Alexis Dickey." The receipt otherwise does not identify the recipient. Plaintiff did not offer evidence to identify Alexis Dickey.

137. Page 2 of Exhibit 14 is entitled, "Statebridge Inventory Checklist-Collateral Documents.

138. The checklist identifies Loan Number 147395, Borrower "Kaney," dated 9/18/19. Exhibit 14. The Crawford & von Kellar letter and attached checklist, fails to show sufficiently the Note, Mortgage and CD were transferred to either Plaintiff's attorneys, or the Plaintiff.

139. Exhibit 15 is entitled "Bailee Letter." Exhibit 15 has three pages. The Bailee Letter is not dated.

140. Plaintiff does not know when Exhibit 15 was created. 304/4

141. The Bailee Letter is addressed to Marc B. Ledesma, Waterfall Asset Management, LLC, 1251 Avenue of the Americas – 50th fl, New York, NY, 110020

142. The Bailee Letter references Servicer loan number 43608, Borrower Name: Singleton, Jamie Singleton, Property Address 5505 Rowsham Pl, North Charleston, SC

143. The Bailee Letter states, "SitusAMC has been engaged for Bailee oversight on behalf of Waterfall Asset Management, LLC, the owner of the loan referenced above." Exhibit 15

144. Exhibit 15 purports to attach:

- a. Original Note
- b. Original Lost Note Affidavit
- c. Original Endorsements describing Exhibits 7.1 through 13.
- d. Original unrecorded Assignments
 - i. FRT 2011-1 Trust to FRT 2013-11 Investor, LLC
 - ii. FRT 2013-1 Investor, LLC to Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1
 - iii. Cascade Funding Mortgage Trust 2017-1 to US Bank Trust, N.A. as Trustee for Cascade Funding Mortgage Trust 2017-1
 - iv. Original Title Policy

145. The third page of Exhibit 15 has a signature above a line under which the name Tomika Cromer is typed.

146. Aside the signature line is the date 10/27/2020 with the notation in parenthesis "received 10/20/2020."

147. Under these dates is the company name McMichael Taylor Gray, LLC.

148. Plaintiff did not produce sufficient evidence to explain origin of the unrecorded Cascade Funding Mortgage Trust 2017-1 to US Bank Trust, N.A. as Trustee for Cascade Funding Mortgage Trust 2017-1 assignment referred to in the Bailee Letter. 316/11

149. Plaintiff claims Tomika Cromer signed it on behalf of Waterfall Asset Management LLC. 309/18

150. But Plaintiff also claims Tomika Cromer is signing on behalf of the law firm. 309/9

151. Further Plaintiff claims that Tomika Cromer is counsel for Waterfall. 309/12

152. Plaintiff admits no purported assignments are to Waterfall Asset Management, LLC. 309/20

153. Plaintiff claims that Waterfall Victoria Grantor Trust II Series G is not an actual entity. 310/25 -311/1.

154. Mr. Amaya testifies that he did not review the Lost Note Affidavit the second item marked in the Bailee Letter, Exhibit 15, explaining it was beyond the scope of his review. 317/4-5 Again repeating "It was beyond the scope of my review. I have not seen it. I have not looked for it." 318/8-9

155. On the issue of the Lost Mortgage Affidavit, this Court finds that Mr. Amaya's testimony is less than compelling as the Lost Note Affidavit is marked in the Bailee Letter received by McMichael Taylor Gray, LLC, Plaintiff's lawyer. Moreover, Mr. Amaya's testimony fails to acknowledge that the collateral file was in the possession of the Plaintiff's lawyer. He is not forthright about this point which casts considerable doubt on his credibility. He testifies as if he looked at these documents at his own offices when, in fact, the collateral file is in possession of Plaintiff's lawyer. Exhibit 15. He should have examined the Lost Note Affidavit, its origin, and the circumstances upon which it was purportedly found.

156. Mr. Amaya did not look for the Lost Note Affidavit or into the basis for it because he relied upon being told by the Plaintiff's lawyers that they had the Note, and the Note was in the original collateral file. 332/ 14-17

157. Taking the evidence set forth in the record of the bailee documentary evidence, Plaintiff fails to show a by a preponderance of evidence that Plaintiff received by an ordinary course of action the Note, the Mortgage, or the following loan history documentary evidence.

Servicing History Analysis

158. Plaintiff admits the loan was serviced by multiple different servicers.

159. Plaintiff admits it did not provide the servicing records of all the servicers. 239/10-13 In a case of this nature, the Court finds this incredulous and raises a significant issue of Plaintiff's credibility.

160. The Plaintiff admitted servicing records of three of the numerous servicers as Exhibits 16, 17 and 18 under the business records exception to the hearsay rule without objection. But the testimony of Mr. Amaya as to Exhibit 16, admitted without objection, is a “payment history from prior servicers for the loan in question.” 140/17-19

161. Exhibits 16, 17, and 18 are servicing histories of the Defendant’s loan with GMAC, Statebridge, and SLS, respectively, whom Plaintiff identifies as servicers. GMAC was a purported holder as well. Cf., Exhibit 2 and Exhibit 8.

162. Notably, Plaintiff did not specify the evidentiary purpose for which these three exhibits were produced.

163. The Defendant did elicit some evidence from the Plaintiff that raised the question of the credibility of Mr. Amaya and these three exhibits.

164. Nonetheless, this documentary evidence speaks to the Court. Although these documents are hearsay, each admissible under SCRE 802 and Uniform Business Records as Evidence Act. [S.C. Code Ann. § 19-5-510](#), evaluation of the credibility of the documentary evidence or some of it must be made by this Court as the trier of facts even if some of it is not contradicted.

165. These business records produced by the Plaintiff together with Mr. Amaya’s testimony are admissible hearsay to prove the truth of the amount Defendant owes the Plaintiff.

166. The evidence is nonetheless subject to examination for credibility by this Court. Hence, first, the Court will find what the evidence is. Thereafter, the Court will evaluate its credibility for truthfulness. Since these are documents contain voluminous data, this Court will pick some specific transactions and will group some transaction to make the credibility determination. Hence, the Court’s analysis will be micro, as to certain data points, and the findings will be a macro analysis as to some of those that are commonly described and lend themselves to findings in common.

Exhibit 16 Analysis

167. Exhibit 16 is a payment history of the loan with GMAC. 142/11-12. It is not Bate stamped (the way to apply a unique number to each page of each case document to quickly review and retrieve specific pages).

168. Exhibit 16 contains 25 pages. Plaintiff's Counsel submitted it into evidence in paper form. Each page of paper on this exhibit contains copies of the payment history on its front and back. Hence, the first page contains pages 1 and 2 of Exhibit 16, the second page is pages 3 and 4, and so forth.

169. A payment history is "Debits and credits applied to a loan. The payment history shows any payments that are sent out or any payments that are received, a debit or credit. It's an accounting of monies received or paid out for a specific loan." 142/15-19.

170. These servicing records come in different formats:

- a. Data digital, which information is computerized information.
- b. Imaged information, image documents.
- c. Original documents, actual physical documents.
- d. Some documents come in multiple formats both digital and imaged, and
- e. Imaged documents can be printed in different formats depending on the type of document that it is. 143/1-11

171. The format of a payment history is "digital data and imaged" when a printed format is created. 143/18-20

172. SLS receives prior servicing files that are incorporated into its business records. 145/18-19

173. The Plaintiff did not explain what it meant by incorporated. By review of the following Exhibits 17 and 18, the files seem to retain original formatting which implies such files are independently retained as digital data files that can be imaged and printed. The record does not suggest incorporation means by reference.

174. Exhibit 16 has several components:

- a. Page 1 of 25 is entitled, "Global/Pay Corporate Advances," dated June 30, 2009: Description is BPO/Inspection Fee.
- b. Page 2 of 25 is entitled, "Global/Pay Corporate Advances," dated June 30, 2009: Description is Lender Placed Insurance.
- c. Page 1 of 25 and page 2 of 25 are "print screens" from the corporate advance payment history of GMAC. 146/18-21.

- d. Page 3 of 25 is entitled, "2009 Detail by Transaction" that continues on Page 4 & 5 of 25.
- e. Page 6 of 25 is entitled, "2008 Detail by Transaction" that continues on Page 7 & 8 of 25
- f. Page 9 of 25 is entitled, "2007 Detail by Transaction."
- g. Pages 3 of 25 through 9 of 25 are a printed archived payment history of GMAC. 146/13-15

175. Pages 10 of 25 through 25 of 25 are not titled.

176. As to Page 1 of 25, Plaintiff did not produce sufficient evidence to explain how these corporate advance payments are incorporated into its current servicer's records. Hence, the Court tried to reconcile these entries with the other records within Exhibit 16.

177. The first entry on Page 1 of 25 is compared to the transaction history for GMAC in 2008. Page 1 of 25 states a transaction described as "BPO/Inspection Fee" payment of \$85.00 was made March 24, 2008. The payment is denoted expense code 41. Pages 6 and 7 of 25 are GMAC Mortgage, LLC's "2008 Detail by Transaction." According to the 2008 Detail by Transaction on March 24, 2008, a transaction described as "Corp Adv 3 D" of \$85.00 was posted. Thereafter, on March 26, 2008, a transaction described as "Prop Inspect" for \$11.25 is recorded. These are inconsistencies that call into question the credibility of Exhibit 16.

178. As to page 2 of 25, this evidence states that on September 4, 2008, a payment of \$2,432.00, described as "Lender Placed Insu", was paid. Page 6 of 25 shows a "Corp Adv 2 E, posted September 4, 2008, of \$2,432.00, then a Reversal of , \$2,432.00, followed by a Corporate Adv 2 E of \$2,432.00 on September 5, 2008, posted under the Column "Lt Charge/Fees. "The next column, "Escrow After," shows a negative increase by the amount of \$2,432.00. The Plaintiff did not explain this transaction. Hence, the Court infers the descriptive "Corporate Adv 2 E" is an insurance payment from the escrow account. The problem, however, is the Exhibit does not show persuasive evidence of where the \$2, 432.00 derived since Defendant's testimony is he paid all insurance premiums since inception of the loan. Cf. 560/14

179. Another unexplained statement on Page 2 of 25 is the report of a total paid of "1305200.25." Plaintiff did not explain this entry but as evidence before the Court it furthers the Court finding of a lack of credibility of this page.

180. Page 3 of 25 is titled "2009 Detail By Transaction." Under the moniker of GMAC Mortgage, naming Defendant by name and address. The transactions appear to be sorted ascending by date posted, i.e., earliest to latest. The Post Dates range from 1/1/2009 to 11/9/2009.

181. The 12 columns on Page 3 of 25, Exhibit 16, are:

Transaction Description	Transaction Amount	Last Paid	Post Date	Principal Paid	Interest Paid
Continuing laterally,					
Escrow Paid	Cr Life/Dissab	Late Charge Fees	Principal Bal After Tran	Escrow Bal After Tran	Unappl Funds After Trans

Exhibit 16

- a. Under the column "Transaction Description," the various Transaction Descriptions are:
 - i. "Prop Inspection,"
 - ii. "Corp Adv 3 D,"
 - iii. "Expense Adva,"
 - iv. "Misc Receipt,"
 - v. "SpeedPay Fee" and
 - vi. "Escrow Deposit," in various rows, Exhibit 16.
- b. Plaintiff produced no evidence explaining these items under the Column, "Transaction Descriptions."
- c. Plaintiff did not produce sufficient evidence to provide evidence of the necessity of the items under the Column, "Transaction Descriptions," designated "Prop Inspect," "Corp Adv 3 D," "Expense Adva," and "Speedpay Fee."
- d. Plaintiff did not produce sufficient evidence to provide evidence of the reasonableness of the items described in the immediately preceding paragraph under the Column, "Transaction Descriptions."

- e. Plaintiff fails to explain a transaction a late fee of \$606.79 posted on March 16 (3/16) that reduced an “Unapplied Funds Balance” by the same amount. Exhibit 16.
- f. Plaintiff did not produce sufficient evidence to explain what the term “Unapplied Funds” means.
- g. Plaintiff did not produce sufficient evidence to explain the necessity of “Unapplied Funds.”
- h. Plaintiff did not produce sufficient evidence to explain the reasonableness of “Unapplied Funds.”

182. Plaintiff did not produce sufficient evidence to explain Prop Inspect of \$11.25 and Lt Charge/Fees of \$11.25 on March 8, 2009. A similar failure of explanation is the Prop Inspect of \$11.25 with corresponding Lt Charge/Fees all posted on the date of March 16, 2009. These transactions posted are just 12 of the 25 transactions reportedly posted on the exact same day.

183. On July 1, 2009, a transaction described as “Serv Rel” shows principal paid of \$209,656.89.

184. The transaction does not say by whom the payment is made or to whom the distribution is made. See Page 5 of 25, “07/1”

185. Thereafter 9 transactions described as Expense Adva posted on July 1, 2008. Plaintiff did not explain the reasons for these payments or to whom they were made.

186. The last posted transaction in 2009 is \$4.18 described as a “Misc Receipt” that appears to derive from “unapplied funds.” The transaction is not explained by the Plaintiff. Nor does this money appear to have been paid to the Defendant. The failure to explain this transaction adds to the lack of credibility this Court gives to Exhibit 16.

187. The P & I payment (principal and interest) is \$2,134.48.

188. The ending principal balance of November 7, 2009, appears to be \$209,656.89.

189. Pages 6 of 25 to 8 of 25 are the 2008 Detail by Transaction reported by GMAC Mortgage, LLC for the loan of the Defendant at his address.

190. These pages are organized the same as those found on Pages 3, 4, and 5 of 25.

191. In 2008 Plaintiff admits receipt of regular payments from the Defendant.

192. Plaintiff fails similarly to explain the following transactions under Transaction Description:

- a. Prop Inspect
- b. Misc. Receipt
- c. SpeedPay Fees
- d. Reversal
- e. Payoff State
- f. Corp Adv 2 E
- g. Serv Rel
- h. Expense Adva

193. The Plaintiff fails to the explain the necessity of these entries.

194. The Plaintiff fails to the explain the reasonableness of charges related to these item.

195. Pages 10 through 25 of Exhibit 16 have no title. The entity for whom or by whom the data recorded is made is indirectly tied to GMAC because these records are included with those of GMAC Mortgage LLC.

196. In order to piece together the puzzle of these 15 pages, the Court aligned pages 10, 12, 14, 16, 18, 20, 22, and 24 of 25 alongside each other.

197. At the top of each page is a row that describes columns, below which data is recorded.

198. The following are the columns:

HistoryCounter	LoanID	TransactionDate	SysDateTime	EffectiveDate
TransactionCode	TransactionAmt	PrincipalAmount	InterestAmount	EscrowAmt
OtherFundsAmt	LateChargeAmt	AssistanceAmt	EndPrincipalBalance	EndEscrowBal
EndOthFundsBal	EndAssistanceBal	EndLostDraftBal	EndUnappliedBal	EndLCAccrBalance
BatchchID	CheckNumber	MoneyType	PayeeID	ReversaCode
ReversalFlag	Username	EscrowCounter	AssmRecCounter	PartialPaid
AdvPmyRuleCode				

199. The rows are numbered descending 88 to 41, page 10 of 25, and 40 to 1, page 11 of 25. Hence, the odd numbered pages align vertically to even numbered pages, as follows: Page 10 of 25 to page 11 of 25, Page 12 of 25 to page 13 of 25, Page 14 of 25 to page 15 of 25, Page 16 of 25 to page 17 of 25, 18 of 25 to 19 of 25, Page 20 of 25 to page 21 of 25 and Page 22 of 25 to page 23 of 25, and then, page 25 of 25. These transactions are reported in descending date order.

200. The 88th transaction under the column HistoryCounter on Exhibit 16, page 10 of 25, is dated October 27, 2010, and shows an ending principal balance of \$208,818.11.

201. The 1st transaction under the column HistoryCounter on Exhibit 16, page 10 of 25, is dated July 7, 2009, and shows a beginning principal balance of \$209,656.89.

202. This principal balance is consistent with that described on page 5 of 25, dated July 1, 2009.

203. Plaintiff submits the last regular payment made by the Defendant was made on 9/15/2010 in the amount of \$1,978.73. 340/22-23. See, also, transaction 87 on Exhibit 16.

204. On page 12 of 25 the 88th transaction is described as “3rd Party Recov Fees Pmt.” On page 14 of 25, the 88th transaction shows a transaction amount of \$0.50 (October 27, 2010).

205. Plaintiff does not offer any testimony to explain this aberrant transaction. The Court traces this transaction across pages 10, 12, 14, 16, 18, 20, 22, and 24. The \$0.50 derives from a BatchID 5256. Notably, the PayeeID column for CounterHistory transaction 88 is blank.

206. Similar transactions are found through-out these pages, however, corresponding disbursements of \$0.50 are observed. Plaintiff gave no explanation for these entries, described as, “3rd Party Recov Fees Pmt.” This calls into question the credibility of Exhibit 16, as well.

207. Exhibit 16, page 14 of 25 shows regular payments entries of \$1,978.73 HistoryCounter transactions #87, #75, #69, #61, and regular payments of \$2,134.48 #56 and #46.

208. At transaction #56 and #46, the interest rate is reported as .1175000.

209. The date of #56 is August 1, 2008.

210. According to the Terms of the Note, August 1, 2008, is an interest rate change date.

211. The Plaintiff did not produce sufficient evidence to offer any evidence of the LIBOR rate for June 17, 2008 (the 45th day prior to the change date).

212. The most recent transaction, the 88th, dated October 27, 2010, shows the outstanding principal balance as \$208,818.11.

213. Plaintiff, however, fails to explain the following transactions, described as “unapplied payments” of History Counter transactions # 85 of \$688.93, #84 of \$1,000.00, #80 of \$688.93, #79 of \$1,000.00, #73 of \$1,000.00, #72 of \$688.93, #67 of 688.93 #66 of \$1,000.00, #59 of \$1,000.00, #58 of \$688.93 #54 of \$1000.00 #53 of \$1000.00, #48 of \$700.00, and #44 \$680.00 all of which are shown on pages 10, 12, and 14. Plaintiff’s failure to explain these unapplied funds leaves the Court to find these transactions lack credibility and raise a question whether the Plaintiff has in fact properly accounted for all payments made by the Defendant.

214. Plaintiff did not produce sufficient evidence to explain similar transactions shown on pages 11, 13, 15, 17, 19, and 21 of 25 as described in the immediately preceding paragraph History Counter transactions # 40 through 1.

Court’s Analysis of Exhibit 17

215. Exhibit 17 is entitled “Shellpoint Mortgage Servicing Loan History Summary.”

216. Exhibit 17 has 9 pages. Plaintiff presented this exhibit the same as Exhibit 16 with copies of the produced information on the front and back of each page. The presentation is cumbersome.

217. Similar to Exhibit 16, twelve columns of data are described across the top of the page (under the title of which is designated Loan ID 0578125938, Borrower, Jamie Singleton).

218. The twelve columns are:

Trans Date Eff Date	Due Date	Trans Desc	Rev Code Flag	Principal Amount Balance	Escrow Amount Balance	Late Charge Amount	Balance	Unappl. Balance	Money Type
------------------------	-------------	---------------	---------------------	--------------------------------	-----------------------------	-----------------------	---------	--------------------	---------------

219. The Transaction Dates on Exhibit 17 cover the period of March 15, 2018, back to February 6, 2015.

220. This leaves a gap in time between the recorded payment history from Exhibit 16 ending on October 27, 2010, to the beginning of the recorded payment history of February 6, 2015 on Exhibit 17.

221. 4.28 years of the recorded payment history is not produced in the trial before this Court.

222. Plaintiff did not produce sufficient evidence of names of servicers during this period.

223. The failure to produce all the recorded payment history raises the Court's suspicion as to the trustworthiness of the business records admitted under the exceptions to the rule against hearsay.

224. The "Transaction Desc" column of Exhibit 17 has descriptions that include "Prop Inspection," "Inv Loan Purchase," "Investor Loan Sale," "Attorney Cost Dish," "Filing Cost Disb," "County Tax Bill 1," "Certified Mail Cost Disb," "BPO Disb," and "Late Charge Assess."

225. The purported ending principal balance of the Note on Exhibit 16 and the purported beginning principal balance of the Note on Exhibit 17 do not match. 157/3-8.

226. The loan identification number on Exhibit 17 does not match the loan identification number on Exhibit 16. Plaintiff produced no explanation for this difference.

227. A troubling occurrence is documented on page 8 of Exhibit 17. The Plaintiff's predecessor applied \$19,330.30 to the loan August 8, 2016. Ten transactions are described as "Regular Payments" of \$1,933.03 of which the Plaintiff Plaintiff's predecessor paid itself \$18,118.96 interest and applied \$1,211.34 to Principal. 158/7 & 360/1-361/3 [Court's calculation].

228. Mr. Amaya incredulously states "some kind of an insurance incident, and something around \$19,000.00 were paid out to the borrower." 159/16-18

229. Mr. Amaya testified, "if I'm not mistaken, I believe during the case, they had asked for the monies to be applied towards the loan." 159/19-21 Mr. Amaya does not describe to whom the pronoun "they" refers. The Plaintiff produced no corroborating evidence to this statement. The Court finds the statement lacks credibility.

230. Mr. Amaya contradicts himself on cross examination by the Defendant stating, "never sai- -- as I said, I found the money from the insurance, so at this point, I do not know where those \$19,000 came from." 361/10-12.

231. To further contradict the application of the ten payments, its source, and method applied to the loan, Mr. Amaya states, “the SLS payment history shows that we still have \$19,000 in the bucket.” 362/19-21.

232. Mr. Amaya further contradicts his direct testimony on cross examination as to the application of the \$19,330.30 stating “incorrect” that “So, that insurance money was applied, most of it, towards interest and a little bit to principal, correct?” 363/5-7

233. Plaintiff, nonetheless, according to Mr. Amaya: “I have determined that the unapplied funds that are in the insurance bucket are still there.” 363/21-23

234. The Plaintiff lacks credibility concerning the receipt and application of the insurance proceeds.

235. A Plaintiff’s predecessor through its servicer, Shellpoint, pocketed the insurance proceeds due to Defendant to cover the repair costs from his kitchen fire. See paragraph 24.

236. Then the Plaintiff’s servicer with disdainful pride and without the slightest justification or explanation, out of the proverbial “thin air,” puts \$19,000 back in a bucket! And, when asked why by this Court? Mr. Amaya states:

A: We did, it’s -- it -- it doesn’t -- I don’t know why we did it, but it’s to the borrower’s benefit. It’s \$19,000 less. 359/3-5

237. The SLS accounting for this issue is incredulous. It is arbitrary. It is unconscionable. Moreover, the Court finds Plaintiff is hiding behind its servicer’s accounting, which is doubly troublesome. Mr. Amaya cannot explain this. So, his superiors have him testify. It’s atrocious attempt to correct Shellpoint’s equally appalling act multiplies the unreliability of the Shellpoint records and the significantly undermine the credibility of the SLS records. See, below.

The Court’s Analysis of the Loan Servicing by Statebridge, Exhibit 18

238. Exhibit 18 is a payment history from the servicer, “Statebridge,” a loan servicer that the Plaintiff states serviced the loan immediately prior to the Plaintiff’s servicer, SLS.

239. Exhibit 18 consists of 120 pages. Like Exhibits 16 and 17, the payment history is printed on the front and back of each page. It is not Bate-stamped but rather numbered in-hand 1 through 120. This presentation is cumbersome, too.

240. Exhibit 18 does not identify the name of the servicer. Exhibit 18 does identify a loan number 0000043608. This number does not appear elsewhere in the plaintiff's exhibits or any other identifying information on any page.

241. By placing page 1 and page 3 alongside each other the Court can see Exhibit 18 has 21 columns of information.

242. The loan identification number on Exhibit 18 does not match the loan identification number on Exhibits 16 and 17. Plaintiff produced no explanation for this difference.

243. Similar to Exhibits 16 and 17, Columns of data are described across the top of the page 1 and page 3.

244. The Columns on Page 1 are:

Loan Id	History counter	Effective date	Transaction date	Transaction Description	Fee Description	Reversal Code	Reversal Flag	Transaction amount	Money Type
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And, the Columns on Page 3 are:

Principal Balance	End Principal Balance	Interest Amount	Escrow Amt	End Escrow Bal	Late Charge Amt	End LC ACCR Bal	Assistance Amt	Check Number	Payee	Batch ID
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245. The payment history begins on April 6, 2018. 171/23. On that date,
- a. The beginning principal balance was \$207,389.70 172/1
 - b. The last transaction from the Shellpoint records is March 15, 2018.
 - c. The ending principal balance on the Shellpoint history is \$207,389.66. 174/15
 - d. The difference of \$0.04 is not explained.
 - e. The Escrow balance on April 6, 2018, is -\$4,956.36. 173/3
 - f. The late charge balance on April 6, 2018, is \$5,439.78. 173/10
 - g. The ending escrow balance is \$27,821.70. 175/4
 - h. The late charge balance at the end of the period November 2022 is \$5,704.78. 175/16

246. Under the column entitled "Transaction Description," the descriptives are:

- a. "3rd Party Recover Fees Assess,"
- b. "Legal Fees Disb,"
- c. "Tax Bill 1 Disb,"
- d. "Other Fees Disb,"
- e. "Insurance Premium Disb,"
- f. "Late Charge."

247. The plaintiff fails to produce sufficient evidence explaining items a., b., d., e. and f.

248. Plaintiff provides no evidence of necessity for these 5 items.

249. Further, Plaintiff fails to provide any evidence of the reasonableness of these items.

250. The Column entitled, "Fee Description," includes the following descriptives:

- a. "Imaging,"
- b. "Inspections,"
- c. "Vendor Management,"
- d. "FC Attorney Fee,"
- e. "Lien Cost/Recording,"
- f. "Miscellaneous (Inv),"
- g. "Litigated,"
- h. "BPO,"
- i. "Postage Costs,"
- j. "Winterization,"
- k. "Tax search,"
- l. "Overnight,"
- m. "Travel Expense,"
- n. "Mediation/Trial."

251. On direct examination Mr. Amaya gave no explanation of these various transactions or their corresponding fee descriptions.

- a. On cross examination Mr. Amaya explained that on page 69, the entry “Third Party Recover Fees Assess” meant attorneys’ fees. 367/15-16
- b. On page 109, the Mr. Amaya cannot explain the transaction description, Travel Expenses of \$1,147.16. 368/17-21; 370/14-16; 372/6
- c. Mr. Amaya testified that Clear Capital Com, Inc., was paid \$100.00 for a BPO.
- d. Mr. Amaya testified that Safeguard Properties Management, LLC was paid an inspection fee of \$15.00 but he offers no evidence of its necessity or it’s reasonableness.
- e. Mr. Amaya testified that Security Connections, Inc., was paid an imaging fee of \$1.99 but he offers no evidence of its necessity or it’s reasonableness.
- f. Mr. Amaya testified that Cyprex, LLC, was paid an inspection fee of \$15.00 but he offers no evidence of its necessity or it’s reasonableness.
- g. Mr. Amaya testified that SLK Global Solutions America was paid a tax search fee of \$0.80 but he offers no evidence of its necessity or it’s reasonableness.
- h. Mr. Amaya testified that Lereta LLC was paid a tax search fee of \$0.95 but he offers no evidence of its necessity or its reasonableness.

252. But Plaintiff offers no evidence of the necessity or the reasonableness of these transaction. Hence, Plaintiff fails to provide sufficient evidence that any of these expenses are recoverable from the Defendant under any provision of the Note or the Mortgage.

An Analysis of Exhibit 19

253. Exhibit 19 is SLS’s “Payment History All Details.” It appears in the form of a spreadsheet.

254. This Exhibit covers the time of December the 9th, 2022, to May 5th, 2023.

255. The Columns on this one page document are:

A	B	C	D	E	F	G
Account Number	Transaction Date	Effective Date	Principal Amt	Interest Amt	Escrow Amt	Late Charge Amt
H	I	J	K	L	M	N

Unapplied Funds Amt	Uncollected Or Shortage Amt	Transaction Amt	Transaction Type	Balance Principle	Balance Escrow	Paid Through Date
O	P	Q	R			
Transaction Code	Transaction Desc	User ID	Trans Batch #			

The rows have been lettered by the Court for ease in referencing. The Exhibit has only 15 rows. The first row shows the column designations. The row numbers are added by the Court, too, for ease in referencing.

256. Exhibit 19 shows:

- a. a principal balance due of \$207,389.66. 181/25 Column L/row 12
- b. an unapplied funds amount of \$19,183.89 Column H, Row 12
- c. the code SR. Column K, Row 12
- d. \$19,183.89 Column J, Row 13 shows.
- e. the code UFL Column K, Row 13
- f. (\$25,881.94) Column J, Row 14
- g. the code SRO Column K, Row 14
- h. \$1,939.75 Column J, Row 15 shows
- i. The code UFU. Column K, Row 15

257. The code SR stands for "Senior Review." 353/4

258. UFL stands for "unapplied funds" title in the L bucket for unapplied funds" 255/16-17

259. The L bucket is not explained.

260. The code SRO stands for "Senior in cashiering," at the loan "start up." 354/2-5 and 354/10

261. The code UFU stands for "unapplied –basically incomplete." 353/22

262. The Plaintiff fails to explain with sufficient clarity the transactions described in paragraphs 256-261. As Mr. Amaya testified, "so it just shows me that those two transactions were created by someone that was reviewing the unapplied funds in the bucket. They pulled it out and had to pull it back in." 359/5-9

263. Mr. Amaya then admits, "With all honesty, Your Honor, as far as I can tell, the \$19,000 were credited --- . . . --- I do not know where they came from. I'm showing that we still have those \$19,000 in unapplied." 358/3-8

264. Hence, Plaintiff is able to manipulate the accounting.

265. The senior review, senior cashiering, unapplied funds (incomplete) accounting entries show the invention of \$19,183.89 and \$1,939.75 are arbitrary, capricious and unconscionable conduct by the Plaintiff¹⁴.

266. This evidence lacks credibility.

Analysis of Exhibit 20

267. This exhibit was admitted with the exception that the initial letters in the title were redacted.

268. Exhibit 20 is entitled, "XXXXXX [redacted] Good Through 6/12/2023" is 2 pages. Plaintiff produced Exhibit 20 to "show[s] a payoff and standard breakdown by category of the total amounts by their categories." 187/8-10 Exhibit 17

269. The Loan Number for Exhibit 20 is 1031270127 and is consistent with Exhibit 19.

270. This number is inconsistent with the loan numbers reported on Exhibits 16, 17, and 18.

271. Exhibit 20 shows what Plaintiff claims as the amounts due on the Note secured by the Mortgage through June 12, 2023:

a. Unpaid Principal	\$207,389.66
b. Interest 12/1/2009 to 6/12/2023	\$293,228.37
c. Escrow Advanced	\$27,821.69
d. Late Charges	\$5,704.78
e. Property Inspection	\$565.00
f. Other Fees & Cost	\$17,112.27
g. Attorney Fees & Cost	\$32,403.50
h. Suspense	-\$1,939.75

272. Plaintiff claims the total due through June 12, 2023, is \$582,285.52. 187/23

¹⁴ An analysis of the handling of the insurance proceeds is found below.

273. Mr. Amaya testified that the "Other Fees & Cost" are "broker price opinions."
377/3

274. Plaintiff fails to establish the necessity for the items d., e., f., g., and h.

275. Plaintiff fails to establish the reasonableness of the items d., e., f., g., and h.

276. Exhibit 20, moreover, does not account for the unapplied funds of \$19,183.89 as shown on Exhibit 19. Cf., 358/3-8

An Analysis of Exhibit 21

277. Exhibit 21 is Plaintiff's "breakdown of the escrow advances." 192/7

278. Plaintiff claims that it has expended \$27,821.69 for county tax and homeowner insurance on behalf of the Defendant.

a. Prior Servicer Taxes advanced are \$4,956.36. 194/2-25

i. County taxes \$2,657.29 from a prior servicer

ii. County tax bill of \$2,299.07, posted 11/27/17. 196/4-6

iii. Plaintiff's Tax advances are \$13,103.36 (Court calculated) Exhibit 21

iv. Total Tax Advanced are \$18,059.72.

b. Homeowner insurance from 2019 through 2022 of \$9,761.67. 195/4-10

279. Plaintiff produced no documentary evidence that it had notified the Defendant that it was placing insurance on the property. 380/2

280. Mr. Amaya testified he did not know that the Defendant had been paying homeowners insurance on the property since 2006. 378/24

281. The claim of homeowner insurance advances fails for Plaintiff's lack of sufficient evidence insurance premiums paid were necessary.

282. Plaintiff did not produce sufficient evidence of the reasonableness of the premiums paid by it.

283. Moreover, Mr. Singleton paid insurance premiums on his property since 2010.
560/14

284. The Plaintiff fails to persuade this Court that the homeowner insurance premiums are due from the defendant.

No Acceleration Letter

285. The Plaintiff did not produce sufficient evidence when the loan initially went into default for non-payment.

Late Charges

286. Exhibit 27, a Notice of Denial of Foreclosure Intervention was filed in this Case on December 19, 2011.

287. The Complaint alleges a default in payment as of March 1, 2009.

288. Notwithstanding, Plaintiff did not produce sufficient evidence to establish the exact date the Defendant defaulted on the Note. 334/14-15.

289. With the denial of foreclosure intervention, the Plaintiff's predecessor would only accept the payment of the full amount of the Note due secured by the Mortgage.

290. Nonetheless, Plaintiff continued to accrue late charges.

291. Plaintiff produces some evidence of what each monthly principal and interest payment was.

292. But the Plaintiff fails to produce sufficient evidence to persuade this court of what each monthly payment of principal and interest due was because it did not produce sufficient evidence of the LIBOR index rate upon which the interest rate is determined.

293. Hence, Plaintiff did not produce sufficient evidence to persuade the Court that the late charges have been properly calculated.

294. Hence, this Court finds the late charges are denied.

Analysis of Exhibit 25

295. Exhibit 25 is an imaged document from a prior servicer. The servicer is not identified. The court admitted it under the business records exception to hearsay, however, the Court gives it no credibility. It is not an original document of SLS. The document refers to account 339522797. It is dated June 30, 2009. This account number is not consistent with any other account or loan number produced into evidence by the Plaintiff. Exhibit 25 is not reliable.

296. Exhibits 31, 32, 33, 34, 35, 36, 37, 38, and 40 were entered into evidence. They relate to Defendant's Bankruptcy initiated in February 2009. Since each of these documents predate the filing of the case, the Court gives these exhibits little weight. Moreover, the Court

gives little weight to Mr. Singleton's testimony concerning these 9 exhibits. This evidence was entered apparently to produce evidence of Defendant's non-compliance with agreements made during a personal bankruptcy case. Weighed against the utter failure of the Plaintiff to demonstrate sufficient evidence to persuade this Court on every amount claimed except the principal balance, the Defendant's conduct does demonstrate he made efforts to get the loan in a performing condition but the Plaintiff's predecessor at this time did not exercise good faith and fair dealing with the Defendant. 546/15-555/23

297. Moreover, to the extent that Plaintiff introduction of Exhibits 31, 32, 33, 34, 35, 36, 37, 38, and 40 were attempts by the Plaintiff to impeach the credibility of the Defendant, such evidence is impermissible since the Defendant is Plaintiff's witness.

298. Plaintiff offered Exhibit 22, public records of Dorchester County. This Court published into the record Exhibit 22, as follows, "real estate inquiries from the Delinquent Tax Collector for Dorchester County, The Honorable Sidney B. Jones, III, of taxes due on the property at 5505 Rowsham Place, North Charleston, South Carolina 29418. The TMS Number for the property is 181-10-06-037 [sic]. Levy Year 2015, levy year 2016, levy year 2017, levy year 2018, levy year 2019, levy year 2020, levy year 2021, levy year 2022, and a separate document entitled Tax Activity Screen has a date of June 12th, 2023. Time 9:23:22. This is a receipt, having a number R20170006033500." 204 17-205/3.

299. Mr. Amaya testified the tax amounts on Exhibit 22 matched the payment shown on Exhibit 21. 206/1-208/5

300. Exhibit 23, consisting of 4 pages, is a summary of Plaintiff's advances related to the property. These include other fees, property inspection fees, attorneys' fees and costs. 209/22-23

301. The Exhibit 23 advances total \$17,112.27. 210/1

302. Mr. Amaya admitted that one charge on Exhibit 23 is \$10.00 coded as a BPO. 383/6-7

303. The Plaintiff provided no sufficient evidence to support payment of \$85.00 to \$100.00 for broker price opinions.

304. The Plaintiff only explanation for the difference in Legal Attorney Fees and FC Attorney Cost is “it’s the coding.” 384/4

305. These explanations do not meet the Plaintiff’s burden of production much less its burden of persuasion.

The Court’s Scrutiny Of The Insurance Proceeds

301. The Plaintiff’s and Plaintiff’s prior holders’, including servicers receipt and application of the insurance proceeds, especially the failure to pay these sums to the Defendant in order to repair his house after a fire, demonstrate an utter failure to follow the implied covenants of good faith and fair dealing.

302. In terms of equity, the Plaintiff comes into this Court with unclean hands.

303. The Court has found the Plaintiff holds only the Note and cannot possess the Mortgage, since it is held by the bankruptcy estate of People’s Choice Home Loans, Inc. Then alternatively, the Court finds that since

- a) The Defendant returned the insurance proceeds check to his then servicer,
- b) the possession of the insurance proceeds were then held by a predecessor servicer that subsequently transferred to the Plaintiff;
- c) Plaintiff through its servicer received all rights of its predecessors through the purported mortgage assignments; and
- d) Plaintiff admits it processes of \$19,183.89 “in the insurance bucket”
- e) Then Plaintiff’s possession of the \$19,183.89 is the Defendant’s insurance proceeds for which these proceeds are
 - i. a benefit conferred by the Defendant upon the Plaintiff;
 - ii. a realization of that benefit by the Plaintiff; and
 - iii. retention of the benefit by the Plaintiff under circumstances set forth above (Mr. Amaya says it’s to the Plaintiff’s benefit) that make Plaintiff’s retention inequitable for it to retain the insurance proceeds without paying its value to the Defendant.

304. In short, Plaintiff retention of the insurance proceeds is an unjust enrichment of the Plaintiff.

305. Moreover, this Court must scrutinize the conduct of the Plaintiff with the utmost care, to ascertain it has done everything which ought to have been done to secure the action requested, i.e., collection of a Note that Plaintiff purports it possesses a validly enforceable mortgage lien. This maxim in equity has at times guided courts in equity to relieve a party from the consequences of accident, mistake, and fraud.

306. This Court scrutinizes the insurance proceeds conduct, as follows:

- a. Defendant acted in good faith. He cooperated (dealt fairly) with the then Note Holder and Servicer to settle the claim.
- b. The Defendant and his wife endorsed the insurance proceeds check payable to him and the servicer and immediately turned it over to the Plaintiff's predecessor servicer with the expectation that the proceeds would be returned to him for the repair of his damaged kitchen (Defendant's conduct shows a continuum of good faith and fair dealing).
- c. Defendant's hands are clean!
- d. The then Note holder's servicer retained the proceeds. The Court infers this conduct was a tactic to gain as much leverage over the Defendant it could at the time. The inference this Court finds is the then servicer was using unfair leverage to make demands of payment on the Note or modification of the Note with incorrect calculations as the Defendant discovered, to which the servicer gave the proverbial "shrug of the shoulders" and mistakenly retained the insurance proceeds, albeit an undeniably egregious mistake (violating the implied covenant of good faith and fair dealing owed the homeowner).
- e. The Note Holder and its servicer had unclean hands!
- f. Thereafter a Note Holder endorsed the Note to another, whose servicer was Shellpoint¹⁵.
- g. Shellpoint doubled down, and mistakenly applied the insurance proceeds to the loan in ten separate payments to maximize the Note holder's return and minimize the Defendant's benefit from the insurance proceeds, which was unreasonable,

¹⁵ Shellpoint serviced the loan at different times. 241/21

and arbitrary, and by any measure of civil conduct, conduct that exposes the failure of the servicer to act in good faith and deal with fairness.

- h. The multiplier of this arbitrary conduct evolves from Plaintiff's mistaken manipulation of the accounting.
- i. In summary, the original retention of the insurance proceeds violated the implied covenant of good faith and fair dealing, with this conduct alone the Court must relieve the Defendant of the plaintiff's predecessor's aberrant and misguided exertion of leverage – a strong arm tactic - between powerful, commercial entities, the Note holder and its servicer, and a powerless residential homeowner consumer, whose only ability to equalize the lop-sided relationship is through protracted litigation.
- f) The misguided application of the insurance proceeds to the loan in “regular payments” giving the then holder \$18,118.96 interest and applying \$1,211.34 to Principal — doubled down against the Defendant. Hence, this servicer's egregious mistake continues the breach of the implied covenant of good faith and fair dealing.
- g) Finally, the Plaintiff's manipulation of the accounting shown in the payment history of the current servicer of the Note Holder, SLS, simply goes to show that when closely scrutinized the conduct of the Plaintiff and its predecessors is a continuum of mistaken, arbitrary conduct that calls out for justice in equity by awarding the Defendant the these long over-due insurance proceeds. Hence, the Plaintiff must return the insurance proceeds of \$19,183.89 to the Defendant.

The Unexplained Suspense account of \$1,939.75

307. In Paragraph 258(h) & 261 above the Court found that an accounting entry of \$1,939.75 was arbitrary. In paragraph 262 above Plaintiff admits this amount is a credit owing the Defendant. These sums, too, shall be awarded to the Defendant bottomed on findings as stated above. Hence, these findings justify the Court's application of the two maxims of equity described in **The Court's Scrutiny Of The Insurance Proceeds** above.

Summary of the Facts

308. Plaintiff did not produce sufficient evidence of the loan servicing history because it did not produce the entire servicing history of the Note and Mortgage.

309. The failure to produce sufficient evidence of the full servicing history demonstrates Plaintiff's lack of credibility.

310. The confusing documentary presentation of the payment histories demonstrate Plaintiff's lack of credibility.

311. The Plaintiff did not produce sufficient evidence establishing necessity and reasonableness of expenditures, except tax payments. This too demonstrates Plaintiff's lack of credibility.

312. Multiple inconsistencies in the demonstrative evidence produced demonstrates Plaintiff's lack of credibility.

313. The Plaintiff's and Plaintiff's prior holders' failure to pay the insurance proceeds over to the Defendant to rehabilitate the property following the Defendant's Father's Day 2012 kitchen fire demonstrates arbitrary, unreasonable, and unconscionable conduct. Hence, this documented conduct supports finding Plaintiff's and Plaintiff's prior holders lack of credibility.

314. Defendant admits he received notices when he was delinquent in paying the amount due under the Note. Defendant does not identify what notices he received. 506/25

315. On August 5, 2020, this Court entered a scheduling order by which it ordered the parties to provide this Court with the original lender's (People's Choice Home Loan, Inc.) Bankruptcy Schedules within 60 days. The Original Lender's bankruptcy schedules have never been provided to this Court.

316. The Plaintiff holds Defendant's Note.

317. The Plaintiff is not a holder in due course.

318. The Plaintiff failed to prove the amount of interest due according to the terms of the Note.

319. Plaintiff produced no sufficient evidence of the contractual relationships between the original Lender and any subsequent holder of the Note.

320. The Plaintiff produced no sufficient evidence that it, or the various predecessor holders of the Note, held the Note, the Mortgage, or any instrument in segregated accounts. See finding above regarding what a servicer does. The Plaintiff did not produce sufficient evidence to persuade this Court that the Plaintiff holds these funds in segregated accounts.

321. Plaintiff fails to produce any evidence it is a participant in the national secondary mortgage market.

322. Plaintiff fails to produce any evidence the Note possesses any protections afforded by law as those laws relate to Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and Federal National Mortgage Association.

323. The Current principal balance on the Note is \$207,389.66.

324. The Plaintiff made payments for ad valorem property taxes of \$18,059.72 on the mistaken belief it had an enforceable mortgage lien on the Defendant's real property.

325. Moreover, Defendant has been unjustly enriched by Plaintiff's payment of Defendant's ad valorem taxes.

326. The Mortgage remains an assets of the People's Choice Home Loan, Inc.'s bankruptcy estate¹⁶.

327. Plaintiff does not know what consideration was paid for the transfers of the Note or Mortgage. 331/20; Cf., Order, dated August 5, 2020.

328. The Plaintiff's and Plaintiff's prior holders', including servicers, receipt and application of the insurance proceeds, especially the failure to pay these sums to the Defendant in order to repair his house after a fire, demonstrate an utter failure to follow the implied covenants of good faith and fair dealing.

329. The Plaintiff's lack of credibility justifies a finding that the Plaintiff comes into this Court with unclean hands.

330. Moreover, the Plaintiff's lack of credibility on many issues evolves into a finding that the Plaintiff comes into this Court without sufficient evidence for this Court to do equity on its equitable claim for foreclosure of a mortgage.

331. Plaintiff is not entitled to recover attorney's fees on the foreclosure action.

¹⁶ See, this Court's order entered March 28, 2023.

332. The Note does not provide for payment of attorney's fees in the event the collection of the Note is placed in the hands of an attorney for collection. Hence, the Plaintiff has no right to the collection of attorneys' fees on the Note.

333. Judgment should be given in favor of the Plaintiff in the amount of \$225,449.38.

334. Plaintiff must return to the Defendant \$21,123.64 it holds on behalf of the Defendant.

335. The \$21,123.64 held by the Plaintiff may be off-set by the judgment due the Plaintiff.

336. All the foregoing Findings of Fact may be construed as Conclusions of Law. All the following Conclusions of Law may be construed as Findings of Fact.

Conclusions of Law

- I. This Court has jurisdiction over this matter. (An action for foreclosure adjudicates and cuts off the mortgagor's interest in real property. It is a proceeding *in personam* as well as *in rem*). Perpetual Building & Loan Association v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978); Anderson v. Pilgram, 30 S.C. 499, 9 S.E. 587 (1889). Bartles v. Livingston, 282 S.C. 448, 454, 319 S.E.2d 707, 711 (Ct. App. 1984))
- II. Plaintiff has the burden of production and the burden of persuasion. (Generally, there are two types of burdens: burden of production and burden of persuasion. Burden of production refers to a party's responsibility to introduce sufficient evidence on a contested issue to have that issue decided by the fact-finder, rather than decided against the party in a preemptory decision such as directed verdict. Pike v. S.C. Dep't of Transp., 343 S.C. 224, 231, 540 S.E.2d 87, 91 (2000). Burden of persuasion is concerned with a party's obligation to sway the fact-finder to view the facts in a way that favors that party. *Id.*, Smith v. Barr, 375 S.C. 157, 161, 650 S.E.2d 486, 489, 2007 WL 2178433 (Ct. App. 2007). In civil cases, the burden of persuasion rests with the plaintiff to prove his or her case, usually, by a preponderance of the evidence. Smith v. Barr, 375 S.C. 157, 161, 650 S.E.2d 486, 489, 2007 WL 2178433 (Ct. App. 2007))
- III. Plaintiff is a holder of a Note and is entitled to enforce it. "Person entitled to enforce" an instrument means "(i) the holder of the instrument." [S.C. Code Ann. § 36-3-301](#)
- IV. A note is a written instrument, and in computing the amount due thereon in principal and interest the computation must be made in accordance with the terms of said note. Citing Tate v. Lenhardt, 110 S. C. 569, 96 S. E. 720. [Rhodus v. Goins, 129 S.C. 40, 123 S.E. 645, 645 \(1924\)](#)
- V. A mortgage foreclosure is an action in equity." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)

- VI. Where the Plaintiff fails to produce sufficient evidence that the assignment of the Note preceded the bankruptcy of the original lender, as holder of the Note, the Plaintiff has not met its burden of production. The assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but the assignment of the mortgage alone does not carry with it an assignment of the note. [Bank of America, N.A. v. Draper \(S.C.App. 2013\) 405 S.C. 214, 746 S.E.2d 478.](#)
- VII. Even if the Plaintiff's Exhibit 7.1 were considered sufficient evidence that the Note was held by an entity other than the original lender before it filed bankruptcy, because Exhibit 7.1 is an endorsement in blank, albeit undated and without any proof of it being transferred to another, Plaintiff's failure to produce all of the business records setting out who held the Note and the payment histories of all of the holders' and their respective servicers' of the Note, fails to persuade this Court that the endorsement in blank of the Note secured by the Mortgage carried with it the assignment of the Mortgage. *Id.*
- VIII. "Arbitrary conduct is readily definable and includes acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone. *Black's Law Dictionary.*" Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621, 1992 WL 71149 (1992)
- IX. The doctrine of unclean hands "precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107 n. 2, 531 S.E.2d 287, 292 n. 2, (2000) (emphasis added) Aaron v. Mahl, 381 S.C. 585, 594, 674 S.E.2d 482, 487, 2009 WL 499356 (2009)
- X. A court of equity should scrutinize the conduct of the plaintiff with the utmost care, to ascertain he has done everything which ought to have been done to secure the action requested. *Corbus v. Alaska Treadwell Gold Mining Co.*, 187 U.S. 455, 465, 23 S.Ct. 157, 47 L.Ed. 256 (1903). This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. *Camp v. Boyd*, 229 U.S. 530, 559, 33 S.Ct. 785, 57 L.Ed. 1317 (1913). "The rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties." *Good v. Jarrard*, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912). [Regions Bank v. Wingard Properties, Inc.](#), 394 S.C. 241, 254, 715 S.E.2d 348, 355, 2011 WL 2535549 (Ct. App. 2011)
- XI. The finding of fact that Defendant shall reimburse Plaintiff for advances of the ad valorem taxes exemplifies the maxim in equity that this Court should relieve Plaintiff from the consequences of its mistaken belief that it had a valid mortgage lien when in fact the mortgage lien remained in the bankruptcy estate of the original lender. Moreover, since the Plaintiff does not possess or hold the Mortgage, the rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties is not applicable because the Note alone does not provide contractual mechanisms authorizing advancements for ad valorem taxes. Court's emphasis.

- XII. The finding of fact that Defendant shall reimburse Plaintiff for advances of the ad valorem taxes also follows from the doctrine of unjust enrichment. “Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff.” *Regions Bank*, 394 S.C. at 256–57, 715 S.E.2d at 356. One seeking to recover for unjust enrichment must show: “(1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.” *477 Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8–9, 532 S.E.2d 868, 872 (2000). *Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 212, 746 S.E.2d 471, 476–77, 2013 WL 3929965 (Ct. App. 2013)
- XIII. Hence, the Plaintiff must pay to the Defendant \$19,183.89 it holds on behalf of the Defendant to avoid the unjust enrichment of the Plaintiff and to correct the tripart mistake explained under the section of this order entitled, **The Court’s Scrutiny Of The Insurance Proceeds**.
- XIV. Likewise, as explained in the section of this Order entitled, **The Unexplained Suspense account of \$1,939.75**, the court concludes these sums, too, shall be awarded to the Defendant bottomed upon findings as stated in **The Court’s Scrutiny Of The Insurance Proceeds** section of the findings. These findings justify the Court’s application of the two maxims of equity described in the insurance proceeds analysis. The maxims of equity require the Plaintiff to deliver over to the Defendant this suspense account item to avoid an unjust enrichment to the Plaintiff and to pay to the Defendant what is an unexplained sum of money held for the credit of the Defendant, thus inferring some mistake in the accounting exists that must be corrected and avoid an unjust enrichment.
- XV. It is well known that equity follows the law. *C & S Nat’l Bank v. Modern Homes Constr. Co.*, 248 S.C. 130, 133, 149 S.E.2d 326, 327 (1966).
- XVI. This Court has the authority to determine the facts of this case. ([The fact finder] will have to pass upon the conflicting evidence and the inferences growing thereout. *Calder v. Com. Cas. Ins. Co.*, 182 S.C. 240, 188 S.E. 864, 866 (1936) In a bench trial, the judge, as the finder of fact, may believe all, some, or none of the testimony, even when it is not contradicted. Cf. *Ross v. Paddy*, 340 S.C. 428, 434, 532 S.E.2d 612, 615 (Ct. App. 2000) *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731, 2017 WL 4942848 (Ct. App. 2017)).
- XVII. The business records of the Plaintiff were admissible hearsay. “Hearsay is an out-of-court statement produced in court to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible unless an exception or an exclusion applies. Rule 802, SCRE. One such exception is the business records exception, which states: “A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that

- business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness....Rule 803(6), SCRE.” State v. Thompson, 420 S.C. 386, 396–97, 803 S.E.2d 44, 49, 2017 WL 2569863 (Ct. App. 2017)
- XVIII. “Hearsay is an out-of-court statement produced in court to prove the truth of the matter asserted.” Jackson v. Speed, 326 S.C. 289, 304, 486 S.E.2d 750, 758 (1997). Bojilov v. Bojilov, 425 S.C. 161, 178, 819 S.E.2d 791, 800, 2018 WL 4476247 (Ct. App. 2018)
- XIX. Nonetheless, the trustworthiness of business records is a question for this Court to decide. The mere production of a business record under as an exception to hearsay does not obviate an examination by this Court, as fact-finder, of their trustworthiness. The failure of the Plaintiff to produce all of the loan record history raises the suspicion of this Court sufficient to examine the trustworthiness of the business records submitted. Moreover, the credibility findings raise the suspicion of this Court sufficient for this Court to evaluate the trustworthiness of the Plaintiff’s business records. (The United States Court of Appeals for the Tenth Circuit has also considered the reliability of business records (involving double hearsay. *See United States v. Ary*, 518 F.3d 775, 787 (10th Cir. 2008) (“The essential component of the business records exception is that each actor in the chain of information is under a business duty or compulsion to provide accurate information. If any person in the process is not acting in the regular course of business, then an essential link in the trustworthiness chain fails[.]” (internal quotations omitted)).*State v. Jordan*, No. 2014-002554, 2018 WL 1180563, at 4 (S.C. Ct. App. Mar. 7, 2018)) Here, the case involves at least 5 levels of hearsay, and undoubtedly more as the Plaintiff admitted it did not produce all of the servicing records of all of the holders of the Note, and their respective servicers.
- XX. The Plaintiff called the Defendant as a witness. Nonetheless any evidence he used to impeach him was improper. (While a party who calls [sic] his adversary as a witness makes him his witness to the same extent that he makes any other person whom he calls as a witness, still he is no more concluded by the testimony of his adversary than he would be by the testimony of any other witness whom he might call. But just as in the case of any other witness, having called him, he may not impeach him or contradict him; but he may prove the facts to be otherwise than as he testifies them to be. *State v. McKay*, 89 S. C. 234, 71 S. E. 858. *Benbow v. Harvin*, 92 S.C. 180, 75 S.E. 414, 417 (1912)).
- XXI. “[A] requisite for the admissibility of business records is that entries therein must have been made at or near the time of the transactions to which they relate. The purpose of this mandate is to aid in establishing that the record was honestly and fairly kept. 30 Am.Jur.2d Evidence § 938 (1967).” *S.C. Nat. Bank v. Jones*, 302 S.C. 154, 155, 394 S.E.2d 323, 324, 1990 WL 110321 (1990)
- XXII. Under Rule 401, SCRE (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”).

- XXIII. Under Rule 801(c), SCRE (“Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, produced in evidence to prove the truth of the matter asserted.”); Rule 803(6), SCRE (“A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective opinions and judgments found in business records are not admissible.” (first emphasis added)); *Stevens v. Allen*, 336 S.C. 439, 455, 520 S.E.2d 625, 633 (Ct. App. 1999), *aff’d*, 342 S.C. 47, 536 S.E.2d 663 (2000) (“[U]nder Rule 803(6), SCRE, a proper foundation must be laid for admittance of the evidence, and this includes a chain of custody.”); *Briggs v. State*, 421 S.C. 316, 323, 806 S.E.2d 713, 717 (2017) (“[I]mproper bolstering testimony is inadmissible.”); *id.* at 325, 806 S.E.2d at 718 (“[N]o witness may give an opinion as to whether [another witness] is telling the truth.”); *State v. Jennings*, 394 S.C. 473, 479, 716 S.E.2d 91, 94 (2011) (“When credibility is the ultimate issue in a case, improper corroboration evidence that is merely cumulative to other testimony is not harmless.”).
- XXIV. The Bankruptcy Code construes property broadly and specifically notes that the estate should include “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541 (a)(1). “Such property interests include non-bankruptcy causes of action that arose out of events occurring prior to the filing of the bankruptcy petition.” *Wilson v. Dollar Gen. Corp.*, 717 F.3d 337, 342 (4th Cir. 2013). *Nolan v. Saxon Mortg., Inc.*, No. GJH-16-1163, 2017 WL 655399, at 3 (D. Md. Feb. 15, 2017)
- XXV. The Plaintiff is not protected by 11 U.S.C. § 541 (a)(1). See, [*In re Cambridge Mortg. Corp.*, 92 B.R. 145, 152, Bankr. L. Rep. P 72349, 1988 WL 117631 \(Bankr. D.S.C. 1988\)](#) (FHLMC has demonstrated that the 64 notes and mortgages are not “property” of the estate within the meaning of 11 U.S.C. § 541. FHLMC has also demonstrated that \$136,213.27 of the \$137,213.27 on deposit in Southern National Bank Account No. 791518707 constitutes principal, interest and escrow payments held by Cambridge in trust for FHLMC and, as such, the \$136,213.27 does not constitute “property” of the estate within the meaning of 11 U.S.C. § 541).
- XXVI. Plaintiff did not produce sufficient evidence of the Bankruptcy Schedule of Assets as ordered by this Court on August 5, 2020, and renewed in my Order dated February 8, 2022. See, also, “where a Plaintiff’s claims were not properly scheduled, any claims remain the property of the bankruptcy estate, even after the bankruptcy case has closed. Thus, Plaintiff lacks standing to pursue these claims. *Nicholas*, 173 F. Supp. 3d at 255 (“[t]he debtor lacks standing to bring an unscheduled, and thus never abandoned, pre-petition claim even if the

debtor was not aware of a legal basis for bringing that claim at the time the bankruptcy petition was filed.” (citing *Miller*, 287 B.R. at 51.)).⁸ Because Plaintiff lacks standing, the Court does not have subject-matter jurisdiction over these claims. Thus, the Court grants Defendant Saxon Mortgage's Motion to Dismiss. ECF No. 35.9 *Nolan v. Saxon Mortg., Inc.*, No. GJH-16-1163, 2017 WL 655399, at 4 (D. Md. Feb. 15, 2017)” Footnote 8 above states, “See also *Borlo*, 458 B.R. at 234 n.8 (D. Md. 2011) (citing *Miller*, 287 B.R. at 50 (“Even a cause of action that the debtor, when filing the petition, did not know the law granted belongs to the estate. Property of the debtor does not escape the bankruptcy estate merely because the debtor is unaware of its existence.”))).

XXVII. Each Conclusion of Law may also be construed as a Finding of Fact. NOW, THEREFORE, IT IS

ORDERED, ADJUDGED AND DECREED that the Plaintiff have judgment on the Note in the amount of \$207,389.66 AND, FURTHER, it is

ORDERED, ADJUDGED AND DECREED that the Defendant shall pay the Plaintiff \$18,059.72 for advances mistakenly made on the belief it held an enforceable mortgage. AND, FURTHER, it is

ORDERED, ADJUDGED AND DECREED that the Defendant shall be given judgment in its favor for the sum of \$21,123.64, which sum may be off-set against the total judgment in favor of the Plaintiff, which sum is \$225,449.38. AND, FURTHER, it is

ORDERED, ADJUDGED AND DECREED that the foreclosure of the mortgage is denied.

THUS, IT IS SO ORDERED!

Electronic signature of the Master-in-Equity follows on a separate page.

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP1800871

U.S. Bank Trust NA		Jamie Singleton	Indigo Pointe Homeowners Association
--------------------	--	-----------------	--------------------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Other: _____
 - Rule 43(k), SCRPC (Settled);
 - Rule 40(j) SCRPC; Bankruptcy;
- ACTION STRICKEN (CHECK REASON):**
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor	Jamie Singleton	225,449.38

Plaintiff: U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G
 Defendants: Jamie Singleton and Indigo Pointe Homeowners' Association,
 Order Denying Foreclose Granting Judgment On Note
 Case No.: 2011-CP-18-00871
 Page 51 of 53

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Jamie Singleton	U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor	21,123.64
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	3078	12/12/2023
Master in Equity	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

January Taylor, Esq.
 Ms. January N Taylor
 McMichael Taylor Gray, LLC
 3550 Engineering Drive Suite 260
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William H. Sloan Jr. PO Box 85 Summerville, SC 29484
William Jeff Barnes, Esquire 9350 Wilshire Blvd Beverly Hills, CA 90212

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

 Court Reporter

 - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2023-12-12 11:56:18 page 54 of 54

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT
COURT OF COMMON PLEAS
IN THE EQUITY DIVISION

C/A No.: 2011-CP-18-00871

U.S. Bank Trust NA as Trustee for Waterfall
Victoria Grantor Trust II, Series G
Plaintiff,

v.

Jamie Singleton and Indigo Pointe
Homeowners' Association,
Defendant(s).

**ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND IN PART AND
DENYING PLAINTIFF'S MOTION TO
AMEND IN PART THE ORDER DATED
12/12/2023**

Presiding Judge: James E. Chellis
Master in Equity, Dorchester County
Trial Conducted on

Monday, June 12, 2023

10:02 a.m. - 4:43 p.m.

Tuesday, June 13, 2023

10:08 a.m. - 4:41 p.m.

Wednesday, June 14, 2023

9:02 a.m. - 3:39 p.m.

APPEARANCES:
For the Plaintiff,

For the Defendant, Jamie Singleton

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And,
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(803) 724-5000

And,
Pro Hac Vice
Jeff Barnes, Esq.
1515 North Federal Highway, Suite 300
Boca Raton, Florida 33432
jeff@wjbarneslaw.com

On December 22, 2023, Plaintiff filed with this Court a Motion pursuant to SCRCP 59(e). On December 12, 2023, the Court issued an Order Denying Foreclosure and Granting Judgment on the Note ("12/12/23 Order"). Plaintiff request the Court to reconsider, alter, or amend certain findings of fact and conclusions of law, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, in this Order. The Motion is timely. The Motion raises certain errors made by this Court. This Order corrects those errors to extent addressed herein. If a specific issue raised by the Plaintiff's Motion is not addressed herein, the Court denies the Plaintiff's Motion as to those issues. If a specific issue addressed by the Motion is addressed in this Order, then the Motion is granted as to that limited purpose.

1. Paragraph 55, which states, "Neither party provided this Court with any specific documents pertaining to People's Choice Home Loans, Inc., bankruptcy proceedings[.]" is amended, as follows:

55. On July 12, 2023, Plaintiff's counsel forwarded to the Court, defendant's counsel and the Court Reporter, an email. Plaintiff attached to the email an Order referred to by Plaintiff's counsel during the trial at page 456:

3 MR. HAYES: I would also like, in the same
4 bankruptcy case, to take judicial notice of the
5 Order issued in the -- the case allowing
6 People's Choice to sell their assets -- to sell
7 or transfer of their assets.
8 THE COURT: I think you mentioned that yesterday.
9 MR. HAYES: Okay. I didn't know if I did or not,
10 Your Honor.
11 THE COURT: You know, to the extent it's in there,
12 I'm going to trust you. I have -- if you want
13 to submit the Order as part of the record, I'll
14 be glad to -- to have it made part of the
15 record since we've mentioned it.

The Order, dated April 19, 2007, is entitled, "ORDER RE DEBTORS' MOTION FOR ORDER (A) AUTHORIZING BULK SALE OF MORTGAGE LOANS OWNED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS; AND (B) AUTHORIZING DEBTORS TO SELL LOANS HELD BY OR FINANCED BY THIRD PARTY WAREHOUSE LENDERS UPON TERMS AND CONDITIONS TO BE NEGOTIATED AND FURTHER DISCLOSED." Paragraph 2 of this

Bankruptcy Order provides: “Debtors are authorized, but not required, to sell in one or more bulk sales in the ordinary course of business, mortgage loans owned by the debtors.” Further, paragraph 3 of the Bankruptcy Order provides, “the Debtors shall provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order.” And further, paragraph 6 of the Bankruptcy Order orders, “The debtors shall provide an accounting to the Committee of all sales consummated.”

- A. Plaintiff fails to provide sufficient evidence that the Note was sold pursuant to this April 19, 2007 Bankruptcy Order.
- B. Plaintiff fails to produce sufficient evidence Note was within the provisions of the Bankruptcy Order that required the Debtor to “provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order.”
- C. Plaintiff failed produce sufficient evidence that the Note was accounted for pursuant to the provisions of the order that “The debtors shall provide an accounting to the Committee of all sales consummated.”

2. Paragraph 332 of the Order, which states, “The Note does not provide for payment of attorney’s fees in the event the collection of the Note is placed in the hands of an attorney for collection. Hence, the Plaintiff has no right to the collection of attorneys’ fees on the Note[.]” is amended, as follows:

332. The Note specifically states: “If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys’ fees.” Hence, the Plaintiff shall have ten (10) days from the date of this Order to move before this Court for an award of its costs and expenses, including reasonable attorney’s fees as provided in the Note.

- 4. The Court strikes paragraph 297 of the Order.
- 5. The Court strikes Conclusion of Law XX. NOW THEREFORE, IT IS

ORDERED, ADJUDGED AND DECREED that Paragraph 55 of the 12/12/2024 Order is deleted, and, in its place, the following Finding of Fact is substituted:

55. On July 12, 2023, Plaintiff's counsel forwarded to the Court, defendant's counsel and the Court Reporter, an email. Plaintiff attached to the email an Order referred to by Plaintiff's counsel during the trial at page 456:

3 MR. HAYES: I would also like, in the same
4 bankruptcy case, to take judicial notice of the
5 Order issued in the -- the case allowing
6 People's Choice to sell their assets -- to sell
7 or transfer of their assets.
8 THE COURT: I think you mentioned that yesterday.
9 MR. HAYES: Okay. I didn't know if I did or not,
10 Your Honor.
11 THE COURT: You know, to the extent it's in there,
12 I'm going to trust you. I have -- if you want
13 to submit the Order as part of the record, I'll
14 be glad to -- to have it made part of the
15 record since we've mentioned it.

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- A. Plaintiff fails to provide sufficient evidence that the Note was sold pursuant to this April 19, 2007 Bankruptcy Order.
- B. Plaintiff fails to produce sufficient evidence Note was within the provisions of the Bankruptcy Order that required the Debtor to "provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order."

C. Plaintiff failed produce sufficient evidence that the Note was accounted for pursuant to the provisions of the order that “The debtors shall provide an accounting to the Committee of all sales consummated.” AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Paragraph 332 in the 12/12/2023 Order is deleted, and in its place the following is substituted:

332. The Note specifically states: “If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys’ fees.” Hence, the Plaintiff shall have ten (10) days from the date of this Order to move before this Court for an award of its costs and expenses, including reasonable attorney’s fees as provided in the Note. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Paragraph 297 of the 12/12/2023 Order is deleted. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Conclusion of Law XX of the 12/12/2023 Order is deleted. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that all other issues not specifically addressed herein but raised by the Plaintiff in its December 22, 2023 Rule 59 (e) Motion to Alter or Amend are denied.

THUS, IT IS SO ORDERED!

Electronic signature of the Master-in-Equity follows on a separate page.



Dorchester Common Pleas

Case Caption: US Bank Trust N A , plaintiff, et al VS Jamie Singleton , defendant, et al
Case Number: 2011CP1800871
Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

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Wilmington Savings Fund Society FSB et al
PLAINTIFF(S)

Jamie Singleton et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This Court's Order granting Summary Judgment to the Plaintiff entered November 21, 2022, is set aside. After revisiting the facts arising from Plaintiff's Motion to Amend that Order, filed December 1, 2022, the Court revisited the original note, mortgage, and initial assignment of the mortgage. The Court again recognized that a peculiar disconnect is apparent in the propriety of the initial recorded assignment of the note and mortgage. A peculiar question arises. The original Lender had filed bankruptcy in March 2007. The initial Lender's nominee, Mortgage Electronic Registration Systems, purported to assign the note and mortgage to a third party in June 2008. Hence, this crucial oversight by this Court requires the Court to set aside its Order dated November 21, 2022. Since the Order is set aside, Plaintiff's Motion to Amend that Order is moot.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/28/2023 .

DB 50 2007-1 Trust
50 by 50 REO LLC
Nomura Holdings Inc.
NNPL Trust Series 2012-1
William Jeff Barnes for Jamie Singleton
Indigo Pointe Homeowners Association
Certificate Trustee for NNPL Trust Series 2012 1
Christiana Trust

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Court will proceed to hear Defendant's Motion for Summary Judgment, filed October 6, 2022, but not styled a cross motion for summary judgment.

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CASE#2011CP1800871



Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Electronic Form 4

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

U.S. Bank Trust NA as Trustee for Waterfall
Victoria Grantor Trust II, Series G
Plaintiff,

v.

Jamie Singleton and Indigo Pointe
Homeowners' Association,
Defendant(s).

IN THE COURT OF COMMON PLEAS

CA No.: 2011-CP-18-00871

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

On October 12, 2022, This Court heard Plaintiff's Motion for Summary Judgment. After consideration of the entire record in this decade old case, specifically including the summary judgment evidence, applicable law, and counsels' arguments, the Court issues the following findings and conclusions. First, the Court summarizes the standards for a grant of summary judgment. Next the Court will discuss its Findings and Conclusions of Law. Finally, the Order follows granting Plaintiff's Motion.

I. SUMMARY JUDGMENT STANDARD

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (S.C. 2001). Summary judgment is appropriate when it is clear from the record that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law pursuant to Rule 56, SCRPC. In determining whether there is any triable fact issue in a case, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001); *Hedgepath v. A.T. & T.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

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7. The failure to pay the note payment when due is a breach of the terms of the Note.
8. Plaintiff's predecessor exercised its right to declare the entire balance plus interest after Singleton failed to pay its Note in accord with its terms. **See, Complaint, and Exhibit D.**
9. Plaintiff claims, as of the date of the hearing, the total due to it of principal, accrued interest, advances, late charges, costs and disbursements, attorneys' fees, and taxes, a total amount of \$552,705.56. **Exhibit D to Plaintiff's Motion.**
10. Plaintiff holds the Note.
11. Plaintiff is a "Person entitled to enforce" the Note and Mortgage because it is the holder of the Note and Mortgage¹. S.C. Code Ann. § 36-3-301. **Exhibit D to Plaintiff's Motion.**
12. The Plaintiff is not a "holder in due course" pursuant to S.C. Code Ann. § 36-3-302.
13. The Plaintiff unnecessarily protracted this litigation by multiple endorsements of the note after the foreclosure suit began. **Exhibit E to Plaintiff's Motion.**
14. The Plaintiff unnecessarily protracted this litigation by multiple allonges of the note after the foreclosure suit began. **Exhibit E to Plaintiff's Motion.**
15. The Plaintiff unnecessarily protracted this litigation by multiple assignments of the mortgage after the foreclosure suit began. **Exhibit E to Plaintiff's Motion.**
16. The Plaintiff unnecessarily protracted this litigation by multiple substitutions of counsel during the foreclosure proceeding. **Exhibit E to Plaintiff's Motion.**
17. The Plaintiff and its predecessors after commencing the foreclosure practiced unfair business policies by repeatedly changing the holder of the note. **Exhibit F to Plaintiff's Motion.**
18. The Plaintiff and its predecessors after commencing the foreclosure practiced unfair business policies by repeatedly transferring servicing rights to the note despite it being in default. **Exhibit F to Plaintiff's Motion.**
19. Plaintiff and its predecessors' repeated transfers of the Note and assignments of the mortgage, together with its transfers of servicing rights are an abuse of its statutory privileges under the South Carolina Uniform Commercial Code (UCC), the purpose of which the Legislature states, in part, "This title must be liberally construed and applied to promote its

¹ An Assignment of Mortgage to the Plaintiff was recorded in the Office of the Register of Deeds for Dorchester County on February 4, 2020, in Book 12313, Page 74.

underlying purposes and policies, which are: (1) to simplify, clarify, and modernize the law governing commercial transactions.” S.C. Code Ann. § 36-1-103.

20. The Plaintiff’s post foreclosure actions hardly simplified the purposes and policies of the UCC.

21. The Plaintiff’s post foreclosure actions hardly clarified the purposes and policies of the UCC.

22. While the UCC grants liberal construction to promote its purposes and policies, Plaintiff and its predecessors failed to consider the principal of judicial economy in its quest to foreclose Singleton’s mortgage utterly disregarding not only the rights of the defendant to a fair and speedy resolution to its claim but also disregarding this Court’s resources.

23. With liberal commercial rights and privileges granted by our legislature to businesses that use the commercial benefits of our UCC comes the restraint to act fairly, to simplify commercial transactions, and in this Court’s view, to be mindful of the rights and duties of third parties², such as the Defendant in its commercial transactions. This self-restraint concept requiring parties in commerce to conduct business fairly and in good faith is greatly magnified once litigation is brought because the Court is another “third-party” whose time, talent and limited resources are affected.

24. Plaintiff’s and its predecessors’ actions utterly disregarded this Court resources even transferring the loan to avoid appearing in Court to prosecute its case when it was scheduled to be heard in the summer of 2016.

25. Plaintiff’s exercise of statutorily authorized commercial purposes are tempered by principals of good faith and fair dealing.

26. Plaintiff and its predecessors’ actions during the foreclosure process failed to exhibit good faith.

27. Plaintiff and its predecessors’ actions during the foreclosure process failed to exhibit fair dealing.

² I am reminded of the following teaching, which the decision-makers who work for the entities such as the Plaintiff should take heed of the Biblical principal found in Luke 12:48, where the following teaching is found: “For unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more.” KJV.(My Emphasis).

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28. The Plaintiff even lost the Note during the course of the litigation. **Defendant's Bellanti Depo #1, page 50, lines 15-22.**

29. The Plaintiff found the Note prompting additional discovery by the Defendant that took place in the offices of Defendant's counsel in Florida. **Exhibit A to Plaintiff's Motion Defendant's Deposition.**

30. The Plaintiff's holds a lien on the real property of the Defendant.

31. The Defendant owes a debt to the Plaintiff. **Exhibit D to Plaintiff's Motion Defendant's Deposition.**

32. The Plaintiff and its predecessors' actions during the foreclosure require this Court to invoke its equitable powers to prevent injustice to the Defendant.

III. CONCLUSIONS OF LAW

33. Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt. *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009) Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction. *Id.* at 374-75, 684 S.E.2d at 205.

34. In the present case, Singleton admitted, through deposition testimony, the debt's validity, and his payment default. Accordingly, Plaintiff established *prima facie* case for foreclosure and sale of the reape property subject to the lien of the mortgage.

35. The burden shifted to the Defendant to present specific facts that show there is a genuine issue of material fact remaining for trial. *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). “[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.” *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009).

36. Defendant asserted several defenses to this foreclosure action; however, the Defendant failed to provide any material facts in support of any defense that prevents this Court from granting summary judgment to Plaintiff.

37. Defendant argued that Plaintiff lacks ownership of the Mortgage and thus lacked standing to sue in this case. Defendant’s argument fails. Plaintiff proved it holds of the Note. See, “[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but ... the assignment of the mortgage alone does not carry with it an assignment of the note.” *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) (“The transfer of a note carries with it a mortgage given to secure payment of such note.”) *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481, 2013 WL 2422875 (Ct. App. 2013).

38. As holder of the Mortgage Plaintiff has the right to enforce the Note and foreclose the mortgaged property. *Id.* S.C. Code Ann. § 36-3-301.

39. “Standing refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (alteration and internal quotation marks omitted). “Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims.” *Id.* (alteration in original) (internal quotation marks omitted). “It concerns an individual’s sufficient interest in the outcome of the litigation to warrant consideration of [the person’s] position by a court.” *Id.* (alteration in original) (internal quotation marks omitted). “Standing is a fundamental requirement for instituting an action.” *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct. App. 1994).

40. “Generally, a party must be a real party in interest to the litigation to have standing.” *Hill v. S.C. Dep’t of Health & Env’t Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (S.C.

2010) (internal quotation marks omitted). “A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation.” *Id.* (internal quotation marks omitted).

41. Rule 17(a), SCRCP, requires that every action be prosecuted “in the name of the real party in interest.” The South Carolina rule is patterned after the comparable federal rule, which has been regarded as embodying the concept that an action shall be prosecuted “in the name of the party who, by the substantive law, has the right sought to be enforced.” It is ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property. *See* 4 S.C. Jur. *Action* § 23 (1991) (footnotes omitted). “The requirement of standing is not an inflexible one.” *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000) (internal quotation marks omitted).

42. South Carolina courts hold that the holder of a note or mortgage is entitled to bring an action to foreclose upon a mortgage. In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the appellate court affirmed a trial court’s order granting summary judgment to a plaintiff who obtained the note via transfer.

43. Regarding “who” is entitled to enforce a debt instrument, the *Draper* court cited Section 36-3-301 of the South Carolina Code (Supp. 2012), which provides:

“Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person

entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

44. The *Draper* court ruled that, for purposes of standing, a holder is a person in possession of an instrument drawn, issued, transferred, or indorsed to him. *Id.* (citing S.C. Code Ann. § 36-1-201(20) (2003)). “[A]n instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.” S.C. Code Ann. § 36-3-602(a) (Supp. 2012).

45. In *Draper*, plaintiff produced copies (not originals) of a note and mortgage and was determined to be the holder of the debt instruments, with proper standing, when it filed the foreclosure action. The appellate court ruled that plaintiff’s evidence satisfactorily established that it was the holder of the note and had standing to foreclose, and therefore, held that the master did not err in granting summary judgment. *Draper*, 405 S.C. 214, 222, 746 S.E.2d 478, 482.

46. In the present case, Plaintiff proved through uncontested Affidavit that it was the holder of the Note by virtue of a transfer from Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1.

47. In addition, Plaintiff proved by public record an assignment of mortgage from Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1, filed as an Assignment of Mortgage recorded in the Office of the Register of Deeds for Dorchester County on February 4, 2020, in Book 12313, Page 74. **Exhibit E to Plaintiff’s Motion.**

48. Like *Draper*, this undisputed evidence is sufficient to show that Plaintiff is the holder of the Note and Mortgage with standing to foreclose.

49. Defendant’s conclusory assertion that Plaintiff is not the “owner” of the Note or Mortgage does not create a genuine issue of material fact.

50. Defendant abandoned its argument of waiver and laches by failing to raise it at the summary judgment hearing. In any case, this argument has no merit and Defendant has no evidence to support it.

51. The equitable doctrine of laches is equivalent to the legal doctrine of waiver, which is the “voluntary and intentional relinquishment or abandonment of a known right.” *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (S.C. 2007) (quoting *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (S.C. 1994)).” Both laches and waiver require a party to have (1) known of a right, and (2) known that the party was abandoning that right.” *Id.* at 85, 650 S.E.2d at 470-71. The party seeking to establish waiver or laches has the burden of proof. *SPUR at Williams Brice Owners Ass’n v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015); *King v. James*, 388 S.C. 16, 28, 694 S.E.2d 35, 41 (Ct. App. 2010). The record in this case is devoid of any evidence that Plaintiff abandoned any rights it has in the Note or Mortgage at any point. Accordingly, there is no material issue of fact presented by Defendant that prevents summary judgment.

52. Defendant argued that Plaintiff brought this case with “unclean hands” and has failed to “act in good faith” with regards to the Administrative Order re: Mortgage Foreclosures dated May 2, 2011, by “offering Defendant a ‘take it or leave it’ mortgage modification offer.” See Defendant’s Answer, Counterclaim and Crossclaims, ¶ 35. Defendant was questioned

extensively at his deposition about these defenses and offered no evidence in support of his claims. **Exhibit A to Plaintiff's Motion.** No genuine issue of material fact exists concerning these defenses, and summary judgment should not be denied on this basis.

53. Defendant abandoned its argument on separation of the mortgage and note by failing to raise it at the summary judgment hearing. Nevertheless, the Court finds that this defense is insufficient to withstand summary judgment. Defendant argues that “the note and mortgage have been split forever.” *See* Defendant’s Answer, Counterclaim and Crossclaims, ¶ 18. The record is devoid of evidence to support this allegation. It is well established that a party pleading an affirmative defense has the burden of proving it. *Pike v. South Carolina Dep’t of Transp.*, 343 S.C. 224, 540 S.E.2d 87 (S.C. 2000); *Hoffman v. County of Greenville*, 242 S.C. 34, 129 S.E.2d 757 (S.C. 1963). “When a defendant interposes an affirmative defense, he becomes as to that matter the actor in the suit, and the burden of proof rests upon him to establish his affirmative defense by the preponderance of the evidence.” *Lorick & Lowrance, Inc. v. Julius H. Walker & Co.*, 153 S.C. 309, 318, 150 S.E. 789, 792 (S.C. 1929). A party opposing a properly supported motion for summary judgment, however, may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. In the present case, Defendant has no evidence to support his allegation, and certainly has no evidence to establish a genuine issue of material fact to overcome summary judgment in favor of Plaintiff.

54. Defendant argued in its pleadings that because a previous holder of the Note and Mortgage filed a foreclosure case, and did not seek a deficiency judgment, the present Plaintiff is estopped from claiming a deficiency. Defendant failed to preserve this argument by offering no

evidence at the summary judgment stage to support it. However, there was not even a scintilla of evidence submitted to support this argument, so it also must fail.

55. Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Colleton Reg. Hosp. v. MRS Med. Rev. Sys.*, 866 F. Supp. 896, 900 (D.S.C. 1994). The doctrine’s purpose is to ensure judicial process integrity, not to protect parties from allegedly dishonest conduct by their adversary. *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (S.C. 2003).

56. Under South Carolina law, a party must prove each of the following five elements for judicial estoppel to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (S.C. 2004).

57. In the present case, there is no evidence before the Court that any previous holder of the Note and Mortgage (1) was successful in maintaining a position on deficiency, (2) received any benefit therefrom, or (3) intentionally misled any court. Accordingly, any defense based upon judicial estoppel is ineffective to overcome summary judgment.

58. “The courts have uniformly applied the principle of equitable set-off with great liberality to prevent injustice even in the cases where elements requisite to legal set-off have been lacking. The facts indicating the injustice of denying the insurance company a set-off in the present case

have been sufficiently presented. The facts warrant the allowance of a set-off even if it should be conceded, as it is not, that there was no strict mutuality of demands. The courts have repeatedly held that the absence of strict mutuality does not prevent the allowance of an equitable set-off, where justice demands it.” *Falconer v. Powe*, Bailey Eq. 156; *Edwards v. Williams*, 39 S. C. 86, 17 S. E. 457; *Scott v. Armstrong*, 146 U. S. 499, 13 S. Ct. 148, 36 L. Ed. 1059; *Merrill v. Cape Ann Granite Co.*, 161 Mass. 212, 36 N. E. 797, 23 L. R. A. 313; *Hughitt v. Hayes*, 136 N. Y. 163, 32 N. E. 706.

59. Plaintiff claims, as of the date of the hearing, the total due to it of principal, accrued interest, advances, late charges, costs and disbursements, attorneys’ fees, and taxes, a total amount of \$552,705.56.

60. This Court concludes that it should exercise its equitable power to set off the amount due to the extent the Plaintiff is asserting a right to accrued interest and attorneys’ fees and cost.

61. Hence, this Court concludes the Defendant owes \$552,705.56 equitable offset by the total interest of \$278,102.34.

62. The Plaintiff failed to establish reasonableness of the escrow by failing to itemize what constitutes the escrow charges

63. The Plaintiff’s “Escrow” charge is denied.

64. The Plaintiff failed to establish the reasonableness of its “corporate advances.”

65. The Plaintiff’s “Corporate Advances” are denied.

66. The total of “Escrow Charges” and Corporate Advances” of \$67,213.56 is denied.

67. The Court concludes each party shall pay their respective attorneys’ fees and costs.

68. The Court concludes that the Total Debt due the Plaintiff is Two Hundred Seven Thousand Three Hundred Eighty-nine And 66/100 Dollars (\$207,389.66).

69. The Court grants Plaintiff's Motion for Summary Judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement. NOW, THEREFORE IT IS

70. ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Summary Judgment is granted; and further it is

71. ORDERED, ADJUDGED AND DECREED the Defendant shall pay the Plaintiff on the Note the sum of Two Hundred Seven Thousand Three Hundred Eighty-nine And 66/100 Dollars (\$207,389.66) representing the "Total Debt" due Plaintiff. Interest on the Judgment shall accrue at the rate of 10.45% per annum as set forth in the Note. And further it is

72. ORDERED, ADJUDGED AND DECREED that the amount due, the sum of Two Hundred Seven Thousand Three Hundred Eighty-nine And 66/100 Dollars (\$207,389.66) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 10.45% per annum. And further it is

73. ORDERED, ADJUDGED AND DECREED That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's Judgment together with interest from the date of this Order to the date of the designated payoff. And further it is

74. ORDERED, ADJUDGED AND DECREED that on default of payment at or before the date of the sale, which shall be requested by the Plaintiff, or in the absence of a request within thirty (30) days of this Order shall be scheduled by the Court, the mortgaged premises described

in the Complaint shall be sold by this Court at public auction at 5200 E. Jim Bilton Blvd.,
Dorchester County Courthouse, Dorchester County, South Carolina, on some convenient sales
day hereafter, on the following terms, that is to say:

FOR CASH (i.e., by Bank Certified Funds): The Master-in-Equity will require a
deposit of Five percent (5%) on the amount of the bid at the time of the sale. This deposit
will be applied on the purchase price only upon compliance with the bid. But in case of
non-compliance within Thirty (30) days the deposit shall be forfeited and applied to the
Plaintiff's judgment debt. Interest on the balance of the bid shall be paid to the day of
compliance at the rate of 10.45% percent per annum. And further it is

75. ORDERED, ADJUDGED AND DECREED that notwithstanding the foregoing, if the
Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the property,
then the sale of the property will be null, void and of no force and effect. In such event, the sale
will be rescheduled for the next available sales day. And further it is

76. ORDERED, ADJUDGED AND DECREED that the sale shall be subject to taxes and
assessments, existing easements and easements and restrictions of record. And further it is

77. ORDERED, ADJUDGED AND DECREED that the Mortgage described herein
constitutes a purchase money first lien priority mortgage on the subject property. And further it is

78. ORDERED, ADJUDGED AND DECREED that the Purchaser is to pay for the deed
preparation, for Deed Stamps and costs of recording the Deed. And further it is

79. ORDERED, ADJUDGED AND DECREED that if the successful bidder is a third party
other than the Plaintiff, interest on the balance of the bid shall be paid to the date of compliance
at the rate of 10.45% per annum. And further it is

80. ORDERED, ADJUDGED AND DECREED that if Plaintiff is the successful bidder at the said sale, Plaintiff may pay to the undersigned Master-in-Equity only the sales commission, the amount of the costs and expenses. The Plaintiff shall, therefore, be credited the balance of the bid on the judgment debt. And further it is

81. ORDERED, ADJUDGED AND DECREED that a personal or deficiency judgment having not been waived, the bidding will remain open after the date of sale for a period of thirty (30) days whereupon this Court shall re-open the bid to knock down the bid to the highest bid amount. And further it is

82. ORDERED, ADJUDGED AND DECREED that that the Master-in-Equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Thirty (30) days after date of sale, then the Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. And further it is

83. ORDERED, ADJUDGED AND DECREED that the Master-in-Equity will apply the proceeds of the sale as follows: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's judgment debt and interest, or so much thereof as the purchase money will pay on the same. And further it is

84. ORDERED, ADJUDGED AND DECREED any surplus will be held pending further order of the court. And it is further

85. ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendant in possession, the Sheriff of Dorchester County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.. Service of any writ, rule, or other order issued by this Court concerning ejectment or removal shall be personal but if after reasonable attempts to personally serve is not able to be accomplished this Court deems service is sufficient if performed by posting at the premises in some conspicuous place with proof thereof being similar in form to that required for service of process. Thus, service upon the Defendant of a Writ of Assistance is sufficient for ejectment and removal if made by posting a copy of the Writ of Assistance at the premises. And it is further

86. ORDERED, ADJUDGED AND DECREED that the Defendant and all persons whomsoever claiming under him shall be forever barred and foreclosed of all right, title, interest, equity and right of redemption in the mortgaged premises so sold. And it is further

87. ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record. And it is further

88. ORDERED, ADJUDGED AND DECREED that the Deed of conveyance made pursuant to the sale shall contain the names of only the Plaintiff and the first named Defendant. and the name of the Grantee, and the Recorder of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed. And it is further

89. ORDERED, ADJUDGED AND DECREED the Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance. And it is further

90. ORDERED, ADJUDGED AND DECREED upon issuance of a Master-in-Equity Report on Sale and Disbursements, the Register of Deeds - Dorchester County is directed to release of record the mortgage lien being foreclosed. The Mortgage is described, as follows:

The Mortgage Jamie Singleton made, executed, and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns. January 12, 2006, the Mortgagee recorded the Mortgage in the ROD for Dorchester County. The Mortgage is found in Mortgage Book 5142 at Page 168.

The following property description of the premises to be sold is:

All that certain piece, parcel or lot of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina and shown and designated as Lot 69, on a Plat of Indigo Point At Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina, prepared by Trico Engineering Consultants, Inc., on February 1, 1999, revised February 16, 1999 and recorded in the RMC Office for Dorchester County on March 15, 1999 in Plat Book J at Page 128. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Jamie Singleton by deed of James D. Wilson dated January 4, 2006 and recorded January 12, 2006 in Book 5142 at Page 165 in the Office of the Register of Mesne Conveyance for Dorchester County.

Property Address: 5505 Rowsham Pl, North Charleston, SC 29418
TMS# 181-10-06-037-000

THUS, IT IS SO ORDERED!!

JUDGE'S SIGNATURE PAGE TO FOLLOW



Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2022-11-18 18:28:21 page 18 of 18

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JAMES P. GEORGE

ORIGINAL

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS
CASE NO. 11-CP-18-871

US BANK, NA, as Trustee, for
FRT 2011-1,

Plaintiff,

- vs -

JAMIE SINGLETON and
INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

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RECORDED
CLERK OF COURT
DORCHESTER COUNTY

Examination before trial of JAMES P.
GEORGE, taken pursuant to the Federal Rules of
Civil Procedure, AMS Services, 3374 Walden Avenue,
Depew, New York, on July 9, 2013, commencing at
11:03 a.m., before WENDY J. BENZEE, Notary Public.



Todd Olivas & Associates
COURT REPORTING AGENCY

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1 with US Bank, NA, as Trustee, for this entity?

2 A. I deal with FRT.

3 Q. What is FRT?

4 A. That's the -- part of the investor.

5 That's the investor, because the entity they use or
6 the trust that they use.

7 Q. Do you know what FRT stands for in this
8 particular instance?

9 A. No.

10 Q. So how do you know that FRT is somebody
11 you deal with?

12 A. It's an investor pool, so the loan is
13 in that investors pool and we service for that
14 investor.

15 Q. And who is the investor?

16 A. The investor is Fortress.

17 Q. So FRT has some association with
18 Fortress?

19 A. Yes.

20 Q. Okay. Do you know what that
21 association is?

22 A. They're the owner. I know when they
23 assign mortgages, it's named in the -- FRT is the
24 name of the entity -- the trust that it's named in.

25 Q. So F would be Fortress, we don't know

1 A. No, because we can still work out loss
2 mitigation options while the loan is in
3 foreclosure.

4 Q. I'm going to refer to this Singleton
5 loan as, this file. Do you know whether or not
6 when this file came under your jurisdiction,
7 whether or not the foreclosure case had already
8 been filed?

9 A. Yes, it had already been filed.

10 Q. Did AMS take over the servicing for a
11 prior servicer on this loan, if you know?

12 A. Yes.

13 Q. Who did they take it over from?

14 A. From Wealth Bridge Mortgage.

15 Q. Who?

16 A. Wealth Bridge.

17 Q. Spell it, please?

18 A. W-E-A-L-T-H B-R-I-D-G-E.

19 Q. Wealth Bridge?

20 A. Correct.

21 Q. Mortgage?

22 A. Yes.

23 Q. They were a servicer?

24 A. Yes.

25 Q. Where are they?

1 Q. Why did you leave BOA?
2 A. After 12 years there was no more room
3 for advancement. It was at the time when things
4 started to fall apart for them.
5 Q. So you went directly from them to this
6 company, AMS?
7 A. Yes.
8 Q. Okay. Which BOA office had you worked
9 out of?
10 A. Getzville, New York.
11 Q. G-E-T-Z ville?
12 A. Yes.
13 Q. Okay. And just real quick, college
14 degree?
15 A. I don't have any college degrees. I
16 did attend college for four years.
17 Q. Where is that?
18 A. Canisius College of Buffalo, New York.
19 Q. Spell it, please?
20 A. C-A-N-I-S-I-U-S.
21 Q. Here?
22 A. Yes.
23 Q. Did you declare a major?
24 A. I was a marketing and management.
25 Q. And did you go directly from Canisius

1 investor.

2 Q. That was a lot, so let's break that up.
3 You said first there was a chain where the loan
4 went from Peoples Choice to GMAC. How did that
5 transfer take place, if you know?

6 A. Through an assignment.

7 Q. Okay. When you say assignment, are you
8 talking about an action, a document or both?

9 A. Both.

10 Q. Okay. And tell me what you know about
11 this assignment of the loan from Peoples Choice to
12 GMAC?

13 A. I particularly have no knowledge of
14 that.

15 Q. So what would lead you to believe that
16 the loan went from Peoples Choice to GMAC?

17 A. From the chain of assignments that I've
18 seen.

19 Q. So you've actually seen a physical
20 assignment?

21 A. Correct.

22 Q. Do you know who the assignment was
23 signed by?

24 A. No, I don't.

25 Q. Do you know whether or not the person

1 page.

2 Q. And did you view that in an electronic
3 form or paper form or both?

4 A. Both.

5 Q. And I think I asked you this earlier,
6 you don't know the person who signed it, right?

7 A. Correct.

8 Q. Okay. Let's talk about the next
9 transfer from -- well, actually let's talk about
10 GMAC. Are you aware that GMAC filed bankruptcy on
11 May 12th, 2012?

12 A. I am not aware.

13 Q. Or May 16th or May 19th, somewhere
14 around there.

15 Do you know whether or not the Singleton
16 loan was in the inventory of GMAC when it filed for
17 bankruptcy?

18 A. That, I don't know.

19 Q. Okay. I'm going to ask you this same
20 question I asked you about the Peoples Choice
21 bankruptcy. Have you ever seen an order from the
22 bankruptcy court having jurisdiction over the GMAC
23 bankruptcy permitting the transfer of the Singleton
24 loan out of the GMAC bankruptcy to this 50 by 50
25 entity?

1 Q. Okay. And obviously then you wouldn't
2 know the person who signed the assignment, right?

3 A. Right.

4 Q. Okay. And do you know how it was that
5 GMAC -- well, let me ask you this: You never
6 worked for GMAC, right?

7 A. Correct.

8 Q. You never worked for 50 by 50?

9 A. Correct.

10 Q. You never worked for Peoples Choice?

11 A. Correct.

12 Q. So you have no knowledge, I guess the
13 driving force behind it or the reason why GMAC
14 would choose to assign this loan to 50 by 50?

15 A. Right.

16 Q. Going back to the -- I'm sorry for
17 jumping around. When the first assignment took
18 place from Peoples Choice to GMAC, do you know if
19 the loan was in default?

20 A. I do not know.

21 Q. Same question as to the assignment from
22 GMAC to 50 by 50. Do you know if the loan was in
23 default at that time?

24 A. Yes, it was.

25 Q. Okay. Did you ever have any dealings

1 any restrictions on the transfer of mortgage loans
2 in this trust by the trust documents?

3 A. Correct.

4 Q. You would not have participated in the
5 drafting of the trust documents?

6 A. Correct.

7 Q. You would not have participated in the
8 transfer of any documents from whatever party to
9 the securitization trustee, in this case
10 US Bank?

11 A. Correct.

12 Q. You would not have had any negotiations
13 with US Bank as to accomplishing these transfers?

14 A. Correct.

15 Q. You would not have had any involvement
16 with respect to transferring documents under any
17 time sensitive schedule?

18 A. Correct.

19 Q. You would not have any knowledge about
20 any sort of sources to protect the investor in the
21 event of default which are not related to
22 insurance, such as interest rate cap reserves,
23 excess reserves, collateralization reserves or any
24 of those sorts of things?

25 A. Correct.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF EQUITY
CASE NO. 2011-CP-18-00871

U.S. Bank Trust N.A. as
Trustee for Waterfall
Victoria Grantor Trust II
Series G for the
Plaintiff Wilmington
Savings Fun Society SFB
DBA Christiana Trust, not
in its individual
capacity but Solely and
its capacity as
Certificate Trustee for
NNPL Trust Series 2012-1,
Plaintiffs,

TRANSCRIPT OF MOTION FOR
SUMMARY JUDGMENT HEARING

ORIGINAL

-VS-

Jamie Singleton and
Indigo Pointe Homeowners
Association,
Defendants

1
2
3
4

Given virtually through Zoom in South Carolina, on
Tuesday, January 18th, 2022, commencing at 1:15 p.m.

1 COURT: So we're here in the matter of U.S.
2 Bank as stated in the pleadings versus Jamie
3 Singleton. This is originally a -- this is a
4 motion for summary judgment filed by the
5 plaintiff -- by the defendant, excuse me, Jamie
6 Singleton.

7 From my reading of the pleadings that have
8 been filed or the response to the return of the
9 motion of summary judgment, if I were to rule
10 against the defendant on its motion, the
11 plaintiff is seeking the court's ruling on a
12 prior file motion for summary judgment; is that
13 correct, Ms. Taylor?

14 MS. TAYLOR: Your Honor, I don't believe we
15 have -- we also have a motion for summary
16 judgment pending at this time. I apologize that
17 I don't have that accurate information.

18 COURT: At the very bottom of your return, it
19 says something along those lines, so I was just
20 curious if you knew anything about that.

21 MS. TAYLOR: I apologize, Your Honor. I do not
22 know if it is pending ---

23 MR. BARNES: Your Honor -- or is still pending
24 ---

25 MS. TAYLOR: --- but I will get it for you.

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1 So in connection with that, and in
2 connection with trying to figure out these
3 alleged transfers, there was a prior motion to
4 substitute the plaintiff, which was a Wilmington
5 Trust related entity to the present plaintiff,
6 which is U.S. Bank National Association not in
7 its individual capacity, solely as owner trustee
8 and West Vue W-E-S-T V-U-E, capital letters NNPL,
9 as in Nancy Nancy Peter Larry, Trust Series 2014-
10 1.

11 So when this came up last time, we filed a
12 motion to dismiss based on pardon, as I
13 recollect, a real party interest issue, that was
14 denied. It was discovery that was compelled. We
15 took the deposition of the plaintiff's Rule
16 30(b)(6) Representative; it was a fellow named
17 Steve Bellanti B-E-L-L-A-N-T-I back on mid-
18 September of last year, in fact, September 17.
19 And Mr. Bellanti testified not only is he
20 corporate counsel for Statebridge Company LLC,
21 which is a servicer, but he's also a lawyer, not
22 licensed in South Carolina apparently, but
23 licensed in Colorado but nonetheless an attorney.
24 And he testified that he was employed by

25 Statebridge Company with servicing that servicer

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1 outstanding discovery requests as to a mortgage
2 loan purchase agreement between NNPL Trust Series
3 2012-1 as seller and Nomura, N-O-M-U-R-A,
4 Corporate Funding LLC as seller responsible
5 party, whatever that means, and Waterfall
6 Victoria Grantor Trustee T-W-O Series G as
7 purchaser and Waterfall Victoria Master Fund LLC
8 as purchaser responsible party.

9 And now there was a necessary affidavit that
10 was marked as Exhibit 9 to the deposition of Mr.
11 Bellanti. He admitted that it was part of
12 Statebridge's collateral file. Collateral file
13 being documents related to the loan. The Lost
14 Note Affidavit was executed on January 28, 2018;
15 per the date of the LNA, the notary was dated the
16 same day. The company on which that was executed
17 for is NNPL Trust Series 2012-1. Paragraph 3
18 states that the company previously originated or
19 purchased the loan identified below by virtue of
20 the Lost Note Affidavit attached to it is Exhibit
21 A.

22 Now, from the examination of what is
23 purported to be the note, which was apparently
24 filed last night at about 20 after 10:00 at
25 night, approximately 11 hours and 40 minutes

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1 corporate counsel, said under oath. He said that
2 somebody else owns this loan and that they have
3 it. And he also says that however,
4 notwithstanding that, that this note is lost and
5 has been lost since January 29, 2018, which is
6 what, four years ago. And nothing in his file
7 reflects that it was ever found. So something is
8 awry here.

9 Now, there is an assignment of mortgage
10 dated February 4, 2020, which was marked as
11 Exhibit 12 to the deposition. Mr. Bellanti, in
12 addition to stating he has no knowledge of the
13 persons whose name appear on that assignment or
14 of their signatures or -- of those other persons'
15 name, says it was executed in favor of Burth
16 (ph), and that the mortgage is typically given to
17 secure repayment of a promissory note, which here
18 is in Peoples Choice Home Loan.

19 Now, some time ago, we had taken the
20 corporate -- the deposition of the attorney for
21 Burth, and during the course that we -- we
22 previously filed this -- during the course of
23 that deposition -- his name was Mr. Patry P-A-T-
24 R-Y, I believe -- he testified under oath that
25 Burth does not do assignments of mortgage for

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1 Now, one of the issues that came up for this
2 is, and this comes up in a lot of the states I
3 work, there's just no law on certain issues and
4 there is no law that I was able to find in South
5 Carolina which permits a non-lender, which all
6 these other parties noted in the Peoples Choice
7 were, to assign an interest in a note which
8 admitted to be lost.

9 And there are other jurisdictions that have
10 dealt with this, and this again, I want to make
11 this clear, I argue this in another context,
12 there is a difference between what foreclosure
13 attorneys who represent banks and servicers call
14 an attack on an assignment versus nothing to
15 assign. They are two completely different legal
16 concepts.

17 And the attack on an assignment relates to a
18 line of cases that originated out of the United
19 States Court of Appeals for the Sixth Circuit
20 beginning with the Livonia Properties case, which
21 says generally, and there are exceptions to this,
22 a borrower cannot raise an attack on an
23 assignment because they're not a party to the
24 assignment. That's kind of disingenuous being
25 that the borrower's loan is the one being

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1 Mr. Bellanti says is not the owner, says, "Oh, we
2 have it. We have the original and here is a true
3 and exact copy of the wet-ink note and we're
4 filing this."

5 Here is my question. Number one -- before
6 there's a Question Number 1, there is no
7 affidavit filed with this response that says we
8 found the note, we have the note, this is where
9 we found it, this is who we got it from, this is
10 where it was located, this is when it was
11 located, we've had it examined and it's an
12 original, et cetera. None of that. All of this
13 stuff in here in this response is essentially
14 unauthenticated, unsworn to statements of counsel
15 in a motion in a lost pretty universal -- if I
16 had time to brief this, which I obviously didn't
17 -- if I had gotten this sooner, I'll admit it's
18 pretty universal in all states that
19 unauthenticated statements of counsel in a motion
20 are not evidence.

21 So all of these statements do not qualify in
22 our opinion as evidence which would be legally
23 sufficient to defeat a motion for summary
24 judgment. Had there been an affidavit filed in
25 support of this authenticating this document or

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1 unauthenticated, essentially hearsay response,
2 you know, we would like to take some discovery on
3 these issues because I -- something doesn't smell
4 right. And that's a polite way of putting it.

5 How does this note that's been lost for four
6 years and a month -- 49 months -- magically
7 appear 11 hours and 40 minutes -- 11 hours and 38
8 minutes before this hearing? Something is not
9 right, especially if you have a sworn testimony
10 of the -- of a lawyer who claims that his client
11 is the owner of this loan, of this note and
12 mortgage, not the plaintiff who says, "Oh, no, we
13 have it."

14 No. Who is it, and how did that take place?

15 But for purposes of today's argument,
16 procedurally, and according to the summary
17 judgment rules, because the plaintiff has failed
18 to submit any competent evidence -- any real
19 evidence at all -- that would serve to defeat Mr.
20 Singleton's motion for summary judgment which is
21 based upon this sworn testimony of the
22 plaintiff's own representative, which again, the
23 plaintiff designated. The plaintiff designated
24 Mr. Bellanti as their representative. They
25 designated him as the 30(b)(6) rep. So that's

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1 filing.

2 I also wanted to address a few things as far
3 as evidence being heard today. I want to point
4 the court to Black v. Lexington, which says that
5 the court can consider any untimely affidavit,
6 exhibits, testimonies, which would not be an
7 abuse of discretion -- I'm sorry, would not be an
8 abuse of discretion -- the court can hear it if
9 there is no showing of prejudice to the opposing
10 party.

11 I wanted to reference that the burden today
12 for the MSJ hearing is actually on the moving
13 party to show that there are no material facts in
14 dispute, and clearly, just by the information and
15 the argument he is presenting here this morning,
16 there are clearly numerous facts that are being
17 disputed.

18 COURT: Let's hold up for a second, Ms. Taylor,
19 so Mr. Barnes can -- I think he may have another
20 phone ringing and it's high, so ---

21 MR. BARNES: Yes, I'm sorry, Your Honor. My
22 wife's phone -- I just asked her to please turn
23 it off.

24 COURT: That's not as bad as the -- good time -
25 - running through my house barking like crazy.

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1 early November, and that's again why I wanted to
2 apologize today for not providing that prior to
3 today.

4 But I do, Your Honor, and I can send the
5 original to the court, however you direct us to
6 handle that. I did not want to send it with it
7 being such close to the hearing. I wanted to
8 wait to make sure I got direction from the court
9 of where you would like us to send this original
10 note.

11 As for the other issues, the underlying
12 motion for summary judgment today, which is what
13 this hearing is for, the underlying issue is I
14 believe opposing counsel is referencing bad law.
15 He has made several statements in his motion for
16 summary judgment that the Lost Note Affidavit is
17 unenforceable, and that's not legally accurate
18 according to the Commercial Code 36.3-309. I
19 apologize -- let me get that verbiage for you.
20 "A person not" -- and this is if we -- if the
21 note is not considered the original note but just
22 referencing the Lost Note Affidavit, which is
23 what he is referencing in his motion for summary
24 judgment, "A person not in possession of an
25 instrument is entitled to enforce the instrument

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1 this case.

2 And again, I just want to point the court to
3 Wells Fargo v. Wolf, which again cites -- which
4 says when determining if any triable issues of
5 fact exist the evidence and all reasonable
6 inferences must be viewed in light the most
7 favorable to the nonmoving party, my client here.
8 It's addressed to -- summary judgment should be
9 cautiously invoked so the litigant will not be
10 improperly deprived of a trial on disputed
11 factual issues.

12 And again, Your Honor, just the argument
13 that opposing counsel has made this morning
14 regarding who the different parties are, who had
15 right to transfer the LNA and thus at this point
16 the original note, they are all facts that should
17 be decided within a trial and not in a motion for
18 summary judgment. I move this court to deny his
19 motion as he hasn't met his burden to show that
20 there are no undisputed facts in this case.

21 COURT: Okay. Thank you very much.

22 MR. BARNES: Response?

23 COURT: Certainly, Mr. Barnes. Go ahead.

24 MR. BARNES: There's just a couple of things
25 that I wanted to address with what the public

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1 very closely, what counsel admitted to was the
2 person entitled to enforce, which they call a
3 PETE out west, same thing. Well, who was he?
4 And as she said, if the transfer was made from a
5 person entitled to enforce at the time the loss
6 occurred. Number one, the loss occurred was --
7 according to Mr. Bellanti's deposition -- was
8 January 29, 2018. Who was entitled to its
9 enforcing back then? He didn't say that
10 Wilmington did it as of that date. What he said
11 was what's in his file is the Lost Note Affidavit
12 and there are no notes in his file showing that
13 the lost note was found at all. This is in
14 Statebridge's records, who was the servicer for
15 the Wilmington entity.

16 So before you go -- opposing counsel goes
17 invoking the UCC in that whose allegedly entitled
18 to enforce the lost instrument, there are
19 requirements in there. You've got to establish
20 number one -- and it's the plaintiff's burden to
21 prove their case too -- they haven't established
22 number one whose possession was the note in at
23 the time it was lost and was that person,
24 corporation, entity, LLP, whatever it was,
25 entitled to enforce it at the time the loss

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1 came from the other law firm; does that make
2 sense? It looks like we received it in our
3 office -- no -- in November of last year, 2021.

4 COURT: When did we have the motion to dismiss?
5 Does anybody have that accessed? I can find it.
6 I have a ---

7 MR. BARNES: I can find it for us, Judge.

8 MS. TAYLOR: I got froze.

9 COURT: Motion to dismiss hearing was held and
10 we have an order that I entered. Where was that
11 order?

12 MS. TAYLOR: That was in I believe February
13 2020 when you allowed the motion to sell the
14 plaintiff.

15 COURT: That was March '21, I entered an order.
16 The hearing was February 9, 2021 or -- let's see
17 -- it was noticed -- the certificate of service
18 of the notice was in February 2021 and let me go
19 back to the question. You said you had it, Ms.
20 Taylor -- and the reason I'm mentioning this, Mr.
21 Barnes and also Ms. Taylor, is for some reason
22 distinctly remember that -- and we can check the
23 testimony if I'm wrong -- but it seems to me that
24 plaintiff's counsel at that hearing on the motion
25 to dismiss made a statement that is notched in my

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1 showing of prejudice to the opposing party.
2 Smith v. Hasty, it's within the court's
3 discretion to allow. Wells v. Fargo versus Wolf,
4 which cites Ingle versus Leafguard, that when
5 determining if any triable issues of fact exist,
6 the evidence and all reasonable inference must be
7 viewed in the light most favorable to the
8 nonmoving party. Moreover, since it's a drastic
9 remedy, summary judgment should be cautiously
10 invoked so that a litigant will not be improperly
11 deprived of a trial on disputed factual issues.
12 Also Hank Hawk v. Midsouth Management says a
13 nonmoving party need demonstrate no more than the
14 mere scintilla of evidence to defeat summary
15 judgment.

16 COURT: Okay.

17 MS. TAYLOR: The Rule 56 itself says that the
18 affidavit may be filed no later than two days
19 before the hearing. So it's really within the
20 court's discretion.

21 COURT: Okay. No later than 48 hours? No
22 later than 48 hours, is that what it says?

23 MS. TAYLOR: That's what Rule 56 says, Your
24 Honor, but all the cases interpret all of that to
25 say that it is within the court's discretion,

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that's happening.

COURT: Okay.

MR. BARNES: And it would not be an abuse of discretion to deny that request.

COURT: All right. And, Ms. Taylor, your comment to that was?

MS. TAYLOR: That if we were in a traditional hearing, then I would present as evidence today the actual original note.

COURT: All right. Right, I got you.

All right. Now, Mr. Barnes, I was intrigued by your argument, I'll have to admit, but I'm going to deny the motion of summary judgment that you filed. I want this case to go forward now. Again, we've been back and forth and back and forth about getting this case tried for forever, it seems like. And I do believe you have a right to inspect the note if you have not already inspected it. And you can -- I'll give you -- how long do you think you need to have your -- before you can have your expert examine the document?

MR. BARNES: There is two issues, Your Honor. Number one, I need to contact the expert to see if they are available because it's going to

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1 that works better for you.

2 I also understand he wants to do additional
3 discovery as to where the original note was
4 found. I understand that. I also think that
5 could be discussed at a trial as well, but that's
6 certainly within your discretion, Your Honor.

7 COURT: Okay. Ms. Taylor, I tend to agree with
8 you. There is the ability to cross-examine would
9 be granted to him. You still have to prove, Ms.
10 Taylor, and based on Mr. -- I mean, you still
11 have to prove the debt and if anything that Mr.
12 Barnes' motion has highlighted for the court is
13 that there may be some difficulties with proof of
14 the debt based on at least the argument that's
15 been presented today because we got -- and Mr.
16 Sloan can chime in here. I mean, we've got a
17 pretty significant case in South Carolina on the
18 issue of -- I'm referring to the Heels case.

19 Anyway, I'm going to let the two of you talk
20 about when you want to do the inspection. Ms.
21 Taylor has graciously agreed to make the
22 inspection available to you, Mr. Barnes, down in
23 Florida, which I think is a pretty, pretty good -

24 --

25 MR. BARNES: It works, Your Honor.

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it was a new plaintiff we had to get discovery of that, so be that as it may, the other thing I want to ask is a housekeeping question since Pam Price is not here today. Am I to work through Pam Price or through counsel who appeared today?

COURT: Ms. Taylor?

MS. TAYLOR: At this time, if opposing counsel is more -- is more comfortable at this time talking to me, I am happy to step in and be his point of contact going forward.

MR. BARNES: All right. Your Honor, then I will need Ms. Taylor's contact information if she can email me.

COURT: I am sure she can get that to you.

MS. TAYLOR: Absolutely, sure.

COURT: Okay. Thank you very much. Ms. Taylor, would you submit a proposed order for me, share it with Mr. Barnes before you send it, and then we will move forward from there.

MS. TAYLOR: Thank you so much, Your Honor. It's been a pleasure, today.

MR. BARNES: Thank you for your time, Judge.

(Whereupon, at 1:57 p.m., the hearing in the above-entitled matter was concluded.)

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-843-593-4662

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

) COURT OF COMMON PLEAS
) C/A #: 2011-CP-18-00871

U.S. Bank Trust N.A. as Trustee)
for Waterfall Victoria Grantor)
Trust II Series G,)

Plaintiff,)

v.)

Jamie Singleton and Indigo Pointe)
Homeowners' Association,)

Defendants.)
-----)

**VIRTUAL DEPOSITION OF
JAMIE SINGLETON**

Thursday, June 23, 2022
10:30 a.m. - 2:04 p.m.

The deposition of JAMIE SINGLETON was conducted virtually on behalf of the Plaintiff in South Carolina, on the 23rd day of June, 2022 before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the deposition is being conducted by remote means and the court reporter is not present with the witness.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet is attached at page 93.



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1 okay?

2 A: Okay.

3 Q: All right. And then the other thing is, it's
4 especially important on Zoom depositions for
5 you to make your answers audible and make your
6 answers clear. When we say things such as huh-
7 uh or uh-huh, sometimes that's kind of hard for
8 the court reporter to get down and we want to
9 have an accurate record, okay?

10 A: Okay.

11 Q: All right. And the last thing that I want to
12 remind you is, do you understand that you're
13 under oath here today, just as if you were in
14 front of a Judge or a jury?

15 A: I do.

16 Q: Okay. And you understand what being under oath
17 means?

18 A: I do.

19 Q: All right. Now, I'm gonna ask you another
20 thing, and that is, if you have questions about
21 what I've asked you here, under our rules, you
22 can not talk with your attorneys during a
23 pendency of this deposition about the subject
24 matter of this case. Do you understand that?

25 A: I do.



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1 **MR. BARNES:** And during this deposition, if Bill or
2 I don't like a question, we may object. But,
3 unless we specifically tell you not to answer,
4 which is only on those limited grounds of
5 privilege, you still have to answer the
6 question. Okay?
7 **A:** Okay.
8 **MR. BARNES:** All right. Thank you, Kim.
9 **MS. WOOTEN:** All right. Mr. Singleton, since the
10 last time that your deposition was taken,
11 actually I don't think you were asked this in
12 2018, so since 2013, have you con, been
13 convicted of any crimes?
14 **A:** Yes.
15 **Q:** Okay. Tell me about that please, sir.
16 **A:** It was an old charge for a check violation
17 charge.
18 **Q:** Okay. I think you had talked about that one,
19 maybe in your prior deposition?
20 **A:** Yes.
21 **Q:** Okay. Is there anything else, other than that
22 prior bad check charge?
23 **A:** That's it.
24 **Q:** Okay. Did you have to serve any time for that?
25 **A:** Nope.



- 1 Q: All right. And, how long have you lived there,
2 again?
- 3 A: Since 2004.
- 4 Q: And, does anyone reside with you at the house
5 currently?
- 6 A: Yes.
- 7 Q: Who resides with you at the house currently?
- 8 A: My wife and two kids.
- 9 Q: Okay. And at your last deposition I believe
10 that the testimony was that you have not made
11 a mortgage payment in this case since December
12 of 2010, is that correct?
- 13 A: I don't recall my testimony. But if it's on
14 the record I stand by it.
- 15 Q: Okay. Well, let me ask you today, then. Do
16 you have any reason to believe that you've made
17 a mortgage payment on this home, located where
18 you live now, since December of 2010?
- 19 A: I will stick by my last deposition.
- 20 Q: Okay. Have you made a payment in the last five
21 years?
- 22 A: No.
- 23 Q: Okay. Has anyone else that you know of made
24 any payments on this home, since December of
25 2010, on your behalf?



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1 objection to the form of the question.

2 **MR. BARNES:** Objection to the form of the question.

3 Q: All right. Mr. Singleton, if you could answer
4 my question please, sir, if you remember it.

5 A: Please repeat the question.

6 Q: Yes, sir. Is it your position in this case,
7 that you shouldn't have to make any more
8 mortgage payments on your home?

9 A: My position is I wanna know who owns the loan.

10 Q: Pardon?

11 A: My position is I wanna know who owns the loan.

12 Q: Okay. And, if you find out who owns the loan,
13 are you gonna pay the mortgage payment?

14 A: At that point, I would.

15 Q: Okay. Do you know how much you owe now in
16 mortgage payment?

17 A: I do not.

18 Q: Okay. And once you find out who owns the
19 loan, do you know how much you are willing to
20 pay in mortgage payments at this point?

21 **MR. SLOAN:** Object to the form. You can go ahead
22 and answer, Jamie.

23 A: Please ask the question again.

24 Q: Yes. You had said that, I had asked you if
25 you, thought you didn't have to pay any more



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- 1 you an opportunity to pay reduced payments for
2 a while. Do you remember that?
- 3 A: I do.
- 4 Q: Okay. And, you did that at the time, correct?
- 5 A: Correct.
- 6 Q: Okay. What do you believe that, once you find
7 out who the true owner is, what do you believe
8 your monthly payments should be now?
- 9 **MR. SLOAN:** Object to the form. Go, go ahead.
- 10 A: The reduced payment.
- 11 Q: Okay. And, how much was that?
- 12 A: It was 1688.
- 13 Q: Okay. And, how long do you thing you should
14 have to pay 1688?
- 15 A: For the life of the loan.
- 16 Q: Okay. Until it's paid off?
- 17 **MR. BARNES:** (Coughing)
- 18 Q: And, you don't have any quarrel with the amount
19 that the mortgage company says is due on the
20 loan, do you?
- 21 A: I do.
- 22 Q: Okay. Tell me what that is.
- 23 A: Fees. Payments that haven't been applied.
- 24 Q: Pardon?
- 25 A: Fees and payments that have not been applied.



- 1 **MR. BARNES:** Object to the form.
- 2 Q: You said fees. What else?
- 3 A: Principles, interest, insurance payments.
- 4 Q: Okay. Well, let's start with principles. You
- 5 said principle?
- 6 A: Correct.
- 7 Q: Correct? All right. What principle do you
- 8 think has been misapplied or dealt with
- 9 improperly in this case?
- 10 A: I don't remember.
- 11 Q: Okay. And what would you have to do to get me
- 12 correct and current information on that?
- 13 A: Don't know where to start.
- 14 Q: Okay. So, as you sit here today, you don't
- 15 have the information about what you think is
- 16 wrong about the principle and you don't know
- 17 where to start?
- 18 A: Correct.
- 19 Q: All right. What other things, you said
- 20 interest. Tell me how you believe interest has
- 21 been misapplied in this case.
- 22 A: We started off paying the higher rate, then a
- 23 lower rate, so we don't have an accounting on
- 24 the interest rate.
- 25 Q: All right. What do you believe is the proper



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1 A: I am.

2 Q: Okay. Then, what's been handled wrong about
3 it?

4 A: Your accounting of you guys paying insurance.

5 Q: Okay. So, when you say your accounting, who,
6 what company has given you the impression that
7 they were charging you for insurance?

8 A: It's been so many, but, they have been. We
9 have changed hands several times.

10 Q: Okay, since this case was brought, have, do you
11 have any evidence of anyone charging you for
12 any insurance?

13 A: I don't remember.

14 Q: Okay. Well, Mr. Singleton, what's important to
15 me today to learn from you, is what your
16 current positions are on the issues in this
17 case. And it sounds to me that, today, as I'm
18 taking your deposition, you don't know what
19 your quarrel is on the principle, you don't
20 know what your quarrel is, or your disagreement
21 is, on the interest, you don't know what your
22 disagreement is on the insurance. How are you
23 going to find those things out so that you can
24 tell me what they are today?

25 A: In discovery.



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- 1 Q: Okay. All right, now, during your, one of your
2 previous depositions, I believe it was the 2013
3 deposition, you testified that you had a tax
4 debt with the IRS?
- 5 A: Correct.
- 6 Q: Okay. Is, do you still have a tax debt?
- 7 A: Yes.
- 8 Q: Okay. Are you still making payments on your
9 payment plan with the IRS?
- 10 A: Yes.
- 11 Q: Okay. And, are you current on those?
- 12 A: Correct.
- 13 Q: All right. All right, since your last
14 deposition, well since, since, this case has
15 been pending, have you bought any other
16 properties, or taken out loans on any other
17 properties?
- 18 A: No.
- 19 Q: Okay. Tell me about the company, do you still
20 have your own painting company?
- 21 A: Yes.
- 22 Q: Okay. Tell me about what kind of work you're
23 doing currently with that company?
- 24 A: Painting dry-wall.
- 25 Q: Okay. Same thing that you've always kind of



1 them.

2 **(Plaintiff's Exhibit Number 1 was referenced at this**
3 **time.)**

4 Q: Okay. Great. All right, let's look at Exhibit
5 Number 1, sir.

6 A: Okay.

7 Q: Are you with me?

8 A: Yes.

9 Q: All right. And, Exhibit Number 1, I'm gonna
10 represent to you is the note that was produced
11 to your counsel in Florida. This is a copy of
12 that note, okay, sir?

13 A: Okay.

14 Q: All right. Did your counsel ever show you a,
15 this is not asking you what communications
16 you've had, but have you ever seen a copy of
17 the original note that was produced in Florida?

18 **MR. SLOAN:** Object to form.

19 Q: Pardon?

20 **MR. SLOAN:** Object to form.

21 A: No.

22 Q: Mr. Singleton?

23 A: You said, have my attorneys, could you please
24 repeat the question?

25 Q: Yes, sir. I'm not asking you for



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- 1 before paragraph one, where it says, borrower's
2 promise to pay? Do you see that?
- 3 A: I see it.
- 4 Q: Okay. Right above that, there's an address
5 listed, and it says 5505 Rowsham Place. Do you
6 see that?
- 7 A: Yes.
- 8 Q: All right. Is that your address?
- 9 A: That's my address.
- 10 Q: Okay. And, you signed the note in this case on
11 January 4th, 2006. Isn't that correct?
- 12 A: Correct.
- 13 Q: Okay. All right. And that's, that comports
14 with your memory of when, when you, earlier, I
15 had asked you when you had entered in to a
16 note, and you had said 2006, correct?
- 17 A: Correct.
- 18 Q: Okay. All right. And you understood that this
19 was an adjustable rate note, correct?
- 20 A: Correct.
- 21 Q: Okay. And the amount of the note that you
22 signed was 212,000 dollars, you recall that?
- 23 A: Correct.
- 24 Q: Okay. And then, as you go on, under paragraph
25 one, on page one of the note, it says



- 1 scheduled due date and will be applied to
2 interest before principle. You understood
3 that, correct?
- 4 A: Correct.
- 5 Q: All right. Then, keep, if you keep reading
6 with me in paragraph three, it says if, on
7 February 1st, 2036, I still owe amounts under
8 this note, I will pay those amounts in full on
9 that date, which is called the maturity date.
10 Do you see that?
- 11 A: I do.
- 12 Q: Okay. And you agree that February 1st, 2036,
13 was the maturity date that you agreed to on
14 your loan?
- 15 A: According to this note, yes.
- 16 Q: Okay. You remember that that's the truth,
17 don't you?
- 18 A: It's in the note, it's there.
- 19 Q: Okay. But, you're not saying you don't agree
20 with that?
- 21 A: No. I'm not.
- 22 Q: Okay. All right. Then the monthly payment
23 that's listed, again, under paragraph 3b, was
24 1,931 dollars and 33 cents, correct?
- 25 A: Right.



- 1 Q: Okay. If you look at the paragraph D, which
2 contains limits on the interest rate charges,
3 do you see that?
- 4 A: I do.
- 5 Q: All right. So, what this paragraph says is the
6 interest rate I am required to pay at the first
7 change date shall not be greater than 13.450
8 percent. You see that?
- 9 A: I do.
- 10 Q: All right. And, then it says or less than
11 10.45 percent. You see that?
- 12 A: I see that.
- 13 Q: Okay. Do you, does this, does this refresh
14 your memory as to what was going to be the
15 minimum interest rate charge on this loan,
16 which was 10.45 percent?
- 17 A: Yes.
- 18 Q: All right. And you understood what adjustable
19 rate note means, do you not?
- 20 A: I do.
- 21 Q: Okay. Now, what does it mean to you, sir?
- 22 A: The rate will change.
- 23 Q: So you expected that the rate could go up,
24 under this paragraph to 16.45 percent? Do you
25 see that in paragraph D?



1 Q: 6?

2 A: I do.

3 Q: Yes, sir. Okay. And, if you look at paragraph
4 seven with me, paragraph seven, that's still on
5 page three, contains some provisions about what
6 happens if you have overdue payments or what
7 happens if you default, does it not?

8 A: It does.

9 Q: Okay. And, at the bottom of this page again,
10 you initialed, correct?

11 A: In 2006, yes.

12 Q: Yes, sir. All right, and then if you look at
13 page four with me. Are you there?

14 A: I'm there.

15 Q: Okay. And, what we have here is your signature
16 as borrower, isn't that correct, sir?

17 A: It's a copy of my, it appears to be a copy of
18 my signature.

19 Q: Okay. But, you don't deny that this is your
20 signature, do you?

21 A: It's my signature.

22 Q: Okay. All right. Let's look at Exhibit Number
23 2 with me, please, sir.

24 **(Plaintiff's Exhibit Number 2 was referenced at this**
25 **time.)**



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- 1 A: Correct.
- 2 Q: Okay. And, if you would, go on to page two of
3 the mortgage with me, sir. Are you there with
4 me?
- 5 A: I'm there.
- 6 Q: Okay. You have, at the top, we have a
7 definition of the lender, again, you have
8 Peoples Choice Home Loan, Inc., correct?
- 9 A: Correct.
- 10 Q: Okay. And then, we have a reference in this
11 mortgage to the note, which says the promissory
12 note, signed by borrower and dated January 4th,
13 2006. Do you see that?
- 14 A: Yes.
- 15 Q: Okay. I want you to go back to Exhibit 1,
16 which is the note, and I want to confirm that
17 the note is dated January 4th, 2006. On the
18 first page of the note, at the very top, right
19 next to the address, right above the address,
20 do you see that?
- 21 A: I don't see that. Oh, I do see it now, yes.
- 22 Q: Okay. All right. So the mortgage that I've
23 just shown you references the date of the note
24 that I just showed you, correct?
- 25 A: Correct.



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- 1 was the correct amount of the note and mortgage
2 that you signed in this case, sir, correct?
- 3 A: The amount of the note, yes.
- 4 Q: Okay, and this mortgage as well?
- 5 **MR. BARNES:** Object to the form.
- 6 Q: Did you make a down-payment?
- 7 A: Sure.
- 8 Q: Okay. Do you remember how much your down-
9 payment was?
- 10 A: Not exactly.
- 11 Q: Okay. We'll look on as this mortgage goes
12 along, okay? As we go along looking at this.
13 So, at the bottom of the page, again, is, are
14 your initials, correct?
- 15 A: Yes.
- 16 Q: All right. And if you look at page three,
17 which is the next page of the mortgage -- you
18 see when we look at the parcel ID number and
19 the address, that is the correct address of
20 your property. Isn't it, sir?
- 21 A: Correct.
- 22 Q: Okay. And you have a -- initialed on that
23 page, as well of this mortgage, correct?
- 24 A: Correct.
- 25 Q: Okay. I want you to, if you would, page with



1 (Plaintiff's Exhibit Number 3 was referenced at this
2 time.)

3 MR. BARNES: (Coughing)

4 MS. WOOTEN: Don't cough up a lung, Jeff.

5 MR. BARNES: I'm covering my mouth.

6 MS. WOOTEN: That's terrible. That stuff is
7 terrible.

8 MR. BARNES: First time.

9 MS. WOOTEN: I've had it, once.

10 MR. BARNES: And I'm double-vaxxed.

11 MS. WOOTEN: I know, right? A lot of people are
12 getting it.

13 MR. SLOAN: 3 is a copy of the adjustable rate?

14 MS. WOOTEN: That's correct. Is it not marked?

15 MR. BARNES: He has a bunch of handwriting on the
16 top. On the left it says AMS-014978.

17 MS. WOOTEN: Right.

18 MR. BARNES: And on the right, it says, GMAC number,
19 etcetera.

20 MS. WOOTEN: Right.

21 MR. BARNES: So we're on the same page?

22 MS. WOOTEN: Right. Okay. Exhibit 3, if that is
23 not marked, Bill, can you mark it as Exhibit 3?
24 I think it should have been, if it's not.

25 MR. SLOAN: I'm taking the documents in front of



- 1 page four, do you see that signature?
- 2 A: I have a question.
- 3 Q: Okay. Well, you don't, unfortunately get to
4 ask questions. But, what is it that you want
5 to know?
- 6 A: I can't answer your question without getting
7 clarification.
- 8 Q: Okay. What clarification do you need?
- 9 A: Am I supposed to look at this as the original
10 that you have shown in Florida? Am I supposed
11 to assume this as being a copy of the original?
- 12 Q: Well, that's what I'm trying to get at, sir.
13 The Exhibit 1, we've already identified as a
14 copy of the original that we produced in
15 Florida.
- 16 **MR. BARNES:** Well, that's the assertion. He didn't
17 admit to that.
- 18 Q: Okay, let's strike that comment.
- 19 **MR. BARNES:** Object to form.
- 20 Q: Yeah. All right, what I'm asking you, sir, I'm
21 looking at another copy of this note. Is that,
22 or is not your, is that, is that or is that not
23 your signature on page four of Exhibit 3?
- 24 A: What, I reviewed now in Florida, does not look
25 like what I signed.



- 1 to be exactly the same?
- 2 **MR. SLOAN:** Object to the form. Go ahead and
3 answer.
- 4 Q: Yes or no, sir?
- 5 A: I went down to Florida, I viewed the note
6 myself in Florida. So ...
- 7 Q: Okay?
- 8 A: What I viewed in Florida looks totally
9 different than what I signed.
- 10 Q: Okay. So, is it your testimony before the jury
11 that Exhibit 1 is not a copy of what you
12 reviewed in Florida?
- 13 A: What I reviewed in Florida was brilliant white
14 paper. It did not appear to be ---
- 15 Q: It was what?
- 16 A: You were asking a question?
- 17 Q: Yes, I asked a question. And you said it was
18 what?
- 19 A: What I viewed in Florida, the note that I
20 viewed appeared to be very, very brilliant
21 white paper. No age.
- 22 Q: Uh-huh.
- 23 A: Papers not aged at all.
- 24 Q: Pardon? The paper was not aged?
25 A: At all.



1 testified that it appears to be a copy of the
2 original note that you signed, correct?

3 A: Appears to be a copy, yes.

4 Q: Okay. And, you recognized your signature on
5 it, and your initials on it?

6 A: On Exhibit 1.

7 Q: Okay. That's all I need to know. All right,
8 now, Exhibit 5 will be our next Exhibit, and
9 that is the pleading -- oh, by the way, Mr.
10 Singleton, if you need a break at any time, you
11 just let me know.

12 A: Just keep going.

13 Q: Water, you know anything like that.

14 **MR. BARNES:** Sorry, Jamie, I forgot to give that
15 instruction.

16 A: I got it.

17 Q: Right, any time.

18 **(Plaintiff's Exhibit Number 5 was referenced at this**
19 **time.)**

20 Q: All right, are you on Exhibit 5 with me?

21 **MR. SLOAN:** She skipped 4.

22 **MR. BARNES:** That's the answered, counterclaim and
23 cross-claims, Jamie.

24 A: I have it.

25 Q: That is your pleading in this case. All right,



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1 start on page two of the answer and counter, or
2 the, yeah, your answer, counterclaims and
3 cross-claims, okay? Are you on page two with
4 me?

5 A: I'm on page two.

6 Q: Okay. So, in paragraph four, if you look, it's
7 a little bit out of sync, but there's a
8 paragraph four where it says, answers to the
9 allegations of the complaint. Are you with me?

10 A: I am.

11 Q: Okay. Paragraph four, in the second sentence
12 says, Defendant, and this is you, does not know
13 who the servicer is. Do you see that?

14 A: Okay.

15 Q: All right. Do you not know who the current
16 servicer is of the loan, sir?

17 **MR. BARNES:** Object to form.

18 A: Current, being they? Now ---

19 Q: Today, yes.

20 A: Statebridge.

21 Q: Okay. And, how did you find that out?

22 A: They sending me servicing, servicer reports.

23 Q: They sent you the servicing notice, and that's
24 how you found out who it is, correct?

25 A: No, no. That's not what I say. That's not



1 years, no.

2 Q: You have documents that you've kept in
3 connection with this issue?

4 A: Pieces, but not all.

5 Q: Where are they located?

6 A: I have a copy of the mortgage, the note,
7 they're located at my house.

8 Q: So, you do have a copy of the mortgage and the
9 note that you signed?

10 A: At closing.

11 Q: Okay. Have you turned those over to your
12 attorney?

13 A: I have.

14 Q: Okay. Did you take them with you when you went
15 to Florida to compare them to the original?

16 A: I didn't.

17 **MR. BARNES:** I'm in the middle of a deposition.
18 It's gonna last at least three hours.

19 **MS. WOOTEN:** Jeff, we can hear you.

20 **MR. BARNES:** Oh, I'm sorry.

21 **MS. WOOTEN:** It's okay. I just didn't want you to
22 say something.

23 **MR. BARNES:** My wife just came upstairs. She's got
24 Covid too, so hold on.

25 **MS. WOOTEN:** Oh geez. It's okay, Jeff. I just



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1 A: It appears to be State ---

2 Q: I'm sorry?

3 A: It appears to be Statebridge.

4 Q: Okay, so my question is, the allegation in your
5 pleading that was filed on July 29th of 2018,
6 where it says, defendant does not know who the
7 servicer is, is no longer correct. You do know
8 who the servicer is. You just told me.

9 **MR. SLOAN:** Object to the form.

10 Q: Yes or no?

11 A: Yes.

12 Q: Okay. Now, you also, your pleading also states
13 that you do not know who the investor is. Do
14 you know today who the investor is? Who owns
15 your mortgage today? Do you know that?

16 A: I do not.

17 Q: Okay. Have you asked anyone.

18 A: We have through discovery.

19 **MR. SLOAN:** Object to the form. Go, go ahead and
20 answer.

21 A: We have through discovery.

22 Q: Okay, and your testimony is that no one's told
23 you through discovery who owns your note, your
24 mortgage?

25 **MR. BARNES:** Object to the form.



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1 to ask you about the, the pleading.

2 **MR. BARNES:** Kim, do you mind if I take a five
3 minute comfort break?

4 **MS. WOOTEN:** No, of course not.

5 **MR. BARNES:** Okay, thank you.

6 **MS. WOOTEN:** Let's do that. So, we're gonna take
7 five minutes. It's okay.

8 **MR. BARNES:** They do things to you.

9 **(Off the record from 11:35 a.m. until 11:41 a.m.)**

10 **Q:** Okay. All right, back on the record, Mr.
11 Singleton, so, let's go down to paragraph six
12 on page two of your answer and counterclaim
13 filed in this case, all right? We still have
14 it in front of him?

15 **A:** Yes.

16 **Q:** Okay, before I go on to paragraph six, let's
17 look at the last sentence of paragraph four.
18 And the part I want to look at, it says that
19 the case should be dismissed under Rule 12B6
20 and/or this case should be stayed per the set
21 of administrative orders until the investor
22 gives the servicer the authority to negotiate
23 and actually does negotiate a mortgage
24 modification in this case. Do you see that?

25 **A:** I do.



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- 1 A: --- is to figure out who owns this loan.
- 2 Q: Right. But, we've already talked about that.
- 3 This is talking about negotiation of a mortgage
- 4 modification and what I need to know is what
- 5 mortgage modification do you want today?
- 6 **MR. SLOAN:** Object to the form. Go, go ahead.
- 7 A: That's a spur of the moment question and I
- 8 don't have an answer for that.
- 9 Q: You don't know what you would be willing to pay
- 10 today?
- 11 A: I can't give a figure today, no.
- 12 Q: When are you gonna be able to? I mean it's
- 13 been ten years. When do you think you might be
- 14 able to.
- 15 **MR. SLOAN:** Object to the form. Go ahead. Answer
- 16 it.
- 17 A: Soon.
- 18 Q: Okay, how soon?
- 19 A: Soon.
- 20 Q: Okay. You think within the next month you
- 21 might be able to give us a figure?
- 22 A: Soon.
- 23 Q: Okay. But, you are willing to negotiate a
- 24 payment?
- 25 **MR. SLOAN:** Object to the form. Go ahead and



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1 figure out what your position is in this case.
2 We've been dealing with this case for ten
3 years, and I need to know today, what your
4 position is. This case is coming up for trial
5 soon. So, the reason I'm asking you these
6 questions is to figure out what your position
7 is on some things that you said in your
8 pleadings, and some things that we need to know
9 to resolve the case. Alright? So, I forget
10 what my question was. I need to go back.

11 **MR. BARNES:** And, I'm sorry, Kim, for
12 clarifications, do we have a set trial date?

13 **MS. WOOTEN:** No. I said the case would be coming up
14 for trial soon. It will be.

15 **MR. BARNES:** That, that implicates a trial being set
16 and I don't recollect Judge Chellis setting it.
17 That's all.

18 **MS. WOOTEN:** No. There's not one set, no.

19 **MR. BARNES:** Oh.

20 **MS. WOOTEN:** . But, I mean, it's been pending a long
21 time. It'll come up soon.

22 **MR. BARNES:** Okay.

23 **MS. WOOTEN:** That's all I'm saying.

24 **Q:** All right, so, so as you sit here today Mr.
25 Singleton, let me just make it clear, you don't



- 1 see that? That's still in paragraph six. Last
2 sentence.
- 3 A: I see it.
- 4 Q: Okay. Have you received any type of notice
5 from Indigo Pointe of any type of lien on your
6 property?
- 7 A: I don't, I don't remember.
- 8 Q: Do you know who Indigo Pointe is?
- 9 A: Of course.
- 10 Q: Okay, who are they?
- 11 A: That's the neighborhood association.
- 12 Q: Okay, have you reached out to anyone in the
13 neighborhood association to determine if
14 there's a lien on your property that they've
15 filed?
- 16 A: I have not.
- 17 Q: Have you received any notices from Indigo
18 Pointe indicating that a lien could be filed on
19 your property for some reason or another?
- 20 A: I don't, don't remember.
- 21 Q: Do, does your neighborhood association, or your
22 homeowner's association or whatever it's called
23 for Indigo Pointe, do they have dues that you
24 have to pay, yearly?
- 25 A: Correct.



- 1 It's impossible.
- 2 Q: Do you remember what's happened in the last
3 three or four years, as far as your homeowner's
4 dues?
- 5 A: Can you ask the question again?
- 6 Q: Yeah. So, you said the reason that you can't
7 answer my question as to whether you've ever
8 been late on your homeowner's dues is because
9 I'm asking you about something that happened 10
10 or 12 years ago. I'm asking you, up to today,
11 so can you remember anything in the last three
12 or four years as to whether Indigo Pointe has
13 either notified you that you are delinquent on
14 your homeowner's dues or filed a lien on your
15 property?
- 16 A: I don't. I mean, I pay my dues. I don't. I
17 don't remember getting anything in the mail.
- 18 Q: Okay. Do you remember any, do you remember
19 talking to anyone with the homeowner's
20 association at Indigo Pointe about any troubles
21 that you've had paying your dues?
- 22 A: No.
- 23 Q: Okay. All right, paragraph seven of your
24 complaint. The last sentence says defendant
25 does not admit the validity of such note or



- 1 you say defendant denies the validity of
2 plaintiff to enforce such mortgage. I'm not
3 exactly sure what that means, denying the
4 validity of plaintiff, but I need to know why
5 you say that the defendant denies the validity
6 of plaintiff to enforce your mortgage?
- 7 A: Listen, my attorney prepared all these answers,
8 and these are legal things that ---
- 9 Q: I totally understand that, but I'm asking you
10 about facts and evidence to support these. I'm
11 not asking you to make a legal conclusion about
12 these. But, I am entitled to ask you what
13 facts or what evidence that you know about,
14 that back up your allegations. So, that's what
15 we're doing here. Okay, I understand that you
16 didn't draft these and that these are, you
17 know, legal pleadings. But, you should have
18 some knowledge of what facts there are to back
19 up your allegations. So, I'll ask you the
20 question again. What facts do you have to
21 support your allegation that you have denied
22 the validity of the plaintiff to enforce your
23 mortgage? Why do you think, what facts do you
24 have to support that allegation?
- 25 A: I'm unsure how to answer that question, because



1 **MR. SLOAN:** No, nope, I sure didn't print off.

2 **Q:** That's okay. We don't have to go there. I'll
3 just ask him the question in a simpler way. Do
4 you, Mr. Singleton, do you have any notices
5 that were ever sent to you by Statebridge, or
6 by the plaintiff in this case, U.S. Bank?

7 **MR. SLOAN:** Object to the form. Go, go ahead and
8 answer.

9 **A:** I, I don't have -- I don't recall.

10 **Q:** Okay. So, you just don't know whether you did
11 or did not receive any such notices?

12 **MR. SLOAN:** Object to the form. Go, go ahead and
13 answer.

14 **A:** I, I don't recall.

15 **Q:** Okay. All right. Let's go to paragraph, page
16 four of your answer and counterclaims, sir.
17 Are you with me?

18 **A:** Yes, I'm here.

19 **(Off the record from 12:02 p.m. until 1:13 p.m.)**

20 **Q:** Okay. In paragraph seven, you have alleged
21 that defendant does not admit the validity of
22 such note or that the plaintiff has any right
23 to enforce said note. Do you see that?

24 **A:** Right.

25 **Q:** Okay. What I need to know is what evidence you



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- 1 A: The fact that we don't have evidence thereof.
- 2 Q: Okay, what do you mean, we don't have evidence
3 thereof? We have a mortgage, right?
- 4 A: Correct.
- 5 Q: And, you signed it. You've already identified
6 it in the record that you signed it, correct?
- 7 A: Correct.
- 8 Q: Okay, so what do you mean we don't have
9 evidence thereof?
- 10 A: What I'm saying is we don't have evidence that
11 the rightful owner of the loan is represented.
- 12 Q: Okay. What evidence do you have that the
13 plaintiff is not the rightful owner?
- 14 A: We don't have, we don't have evidence of it.
- 15 Q: Okay. All right. Let's look at, if you would,
16 paragraph 11. We had talked about notices.
17 Paragraph 11 in your complaint says, the
18 complaint does not actually state whether
19 plaintiff or its agent sent any notices to the
20 defendant? Do you see that?
- 21 A: I see that.
- 22 Q: Do you know what evidence you have that the
23 plaintiff failed to send any notices that were
24 required?
- 25 A: I don't.



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1 don't have the legal capacity to understand.

2 Q: Sure. I know that I understand that this is a
3 pleading, and that you did not prepare it.
4 What I'm trying to get is your position in this
5 case about facts and evidence. Do you know
6 what insurances were placed on the loan in this
7 case. If you don't, then you just need to tell
8 you me you don't know.

9 A: I don't, I don't know.

10 Q: Okay. Now, let's go to paragraph 35. If, and
11 we went through this before, and we're gonna
12 have to go through it again. In the last
13 sentence of paragraph 35, you have alleged the
14 plaintiff offered defendant a take it or leave
15 it mortgage modification offer. Do you see
16 that?

17 A: Correct.

18 Q: Okay, and I believe it is your testimony that
19 the take it or leave it mortgage modification
20 offer that was, that was referred to in this
21 pleading is the 2011 offer that was given by
22 AMS, is that correct?

23 A: That's what it says.

24 Q: Okay. And, as far as that offer by AMS is
25 concerned, you have alleged that they failed to



1 Q: Pardon?

2 A: It hasn't been a whole lot of communication
3 between me and AMS thereafter.

4 Q: Okay, are those the only ways that you know
5 that anyone has acted in bad faith towards you
6 in this case?

7 A: I, I would have to say what I can remember at
8 this point.

9 Q: Okay, that's all you can remember as you sit
10 here today?

11 A: At this point.

12 Q: Okay, did you ever receive a notice of
13 acceleration on this loan?

14 A: I don't remember.

15 Q: Okay. Please turn with me to page seven of
16 your answer and counterclaim. All right. All
17 right, let's look at paragraph 51.

18 A: Okay.

19 Q: Paragraph 51 states, at some point and time
20 unknown to the counter-plaintiffs, that's you,
21 the mortgage loan was sold in parsed fashion to
22 one or more third parties. What evidence that,
23 do you have that the mortgage loan was sold in
24 parsed fashion?

25 A: I, I don't know.



1 I'm asking you about facts, sir. Do you know
2 of any facts to support an allegation to
3 support that there were ineffective assignments
4 in this case?

5 A: I don't.

6 Q: Okay. All right, let's go down to number 78,
7 paragraph 78 of your answer and counterclaim,
8 on page 11.

9 A: Okay.

10 Q: All right. In paragraph 78, you have added
11 many, many cross-defendants in this case and
12 you have a paragraph that says cross-defendant
13 Does 1-10 are not identified at this point, but
14 are reserved in event that discovery reveals
15 other parties which may be added. If any such
16 parties are found or claim to have an interest
17 in the outcome of this action. Are you aware
18 of any other parties that should be added
19 because they have an interest in the outcome of
20 this case at this time?

21 A: Again, you're asking me to comment on legal
22 conclusions that I, I don't understand.

23 Q: Okay. So I'm not asking you for legal
24 conclusions, sir, and, I wouldn't ask you for
25 legal conclusions. What I'm asking you for is



1 styled AMS servicing, which stated that, on
2 October 31st, 2011, FRT 2011-1 Trust acquired
3 your mortgage loan. Do you see that?

4 A: I do.

5 Q: Okay. Did you receive that letter, sir?

6 A: It says I did.

7 Q: Okay. Do you remember receiving such a letter
8 on or about November 23rd, 2011?

9 A: 2011? That's a long time to try to remember
10 something.

11 Q: Okay. All you need to tell me is yes or no, or
12 if you don't remember, just say you don't
13 remember.

14 A: It says it here. It says it.

15 Q: I understand it says it. Do you remember
16 yourself receiving such a letter?

17 A: If it's here, I believe so.

18 Q: Okay. All right, let's go then, turn on to
19 page 16 of your answer and counterclaim, sir.
20 All right. If you would please read paragraph
21 101 to yourself, and let me know when you're
22 done.

23 A: I'm done.

24 Q: Okay. There are allegations here in this
25 paragraph about converting the loan to a



1 paragraph, you have alleged in your answer and
2 counterclaim that material changes in the
3 character of the loan was never disclosed to
4 Mr. Singleton and was intentionally withheld
5 from him. What evidence do you have that this
6 plaintiff, or anyone else in this case,
7 intentionally withheld from you, any kind of
8 information about pooling of the loans?

9 **MR. BARNES:** Object to the form.

10 Q: Okay. Let's got to paragraph 104. And, if
11 you'll read that one to yourself, please.

12 A: Okay.

13 Q: Okay. So, paragraph 104, again, has some
14 allegations about the change and the essential
15 character of the loan, alleging that the
16 residential mortgage loan had been converted to
17 a commercial investment, eliminating some
18 benefits for you. It goes on to say in that
19 paragraph that these facts were not disclosed
20 to Mr. Singleton, and were intentionally
21 withheld from him, in order to induce him to
22 enter in to the alleged loan transaction, and
23 continue to make payments thereon. Do you see
24 that?

25 A: I read it.



1 Q: Okay. And, in this particular paragraph, you
2 have alleged that the fact that there could be
3 a third party servicer, destroying the direct
4 relationship between you and the lender was not
5 disclosed to you. Do you see that?

6 A: Yes.

7 Q: Okay. If you would, please go back to Exhibit
8 Number 2, which is the mortgage in this case.
9 Go, go to page, paragraph 20 of that note, or
10 of that mortgage, I'm sorry. All right. I'm
11 going to read a portion of this paragraph for
12 the record, and I want you to tell me if I've
13 read it correctly, once I'm finished, okay?

14 A: Okay.

15 Q: Paragraph 20 states, The note or a partial
16 interest in the note, together with this
17 security instrument can be sold one or more
18 times, without prior notice to borrower. A
19 sell might result in a change in the entity
20 known as the loan servicer that collects
21 periodic payments due under the note and this
22 security agreement, and performs other mortgage
23 loan servicing obligations, under the note this
24 security interest and applicable law. Did I
25 read that correctly?



- 1 Q: All right. This has to do with pooling of the
2 loans, again, and this allegation is that, is
3 that the pooling resulted in the loan being
4 inextricably intertwined with other loans,
5 resulted in a unilateral change of the
6 character of the note. Do you see that?
- 7 A: I do.
- 8 Q: Okay and what evidence did you, did you have
9 that anyone in this case intentionally withheld
10 information from you, in order to induce you to
11 enter in to the loan, or make payments on?
- 12 A: None.
- 13 Q: Okay. All right. Let's go to, by the way,
14 have you reviewed any of the depositions that
15 were taken in this case of any of the parties
16 or any witnesses?
- 17 A: Oh no.
- 18 Q: Okay. All right. All right, let's look at
19 paragraph, the next paragraph, which is
20 paragraph 107. Would you please read that one
21 to yourself?
- 22 A: Okay.
- 23 Q: Okay. This paragraph has to do with insuring
24 of the loan, in different ways. Is there any
25 evidence that you have that the way that these



1 A: I think, I believe, the GMAC document.

2 Q: What else? What other various plaintiffs?

3 A: I don't recall. I don't have them in front of
4 me, so I don't recall ---

5 Q: I, when you say you don't recall, that suggests
6 to me that, at some time, you did have such
7 knowledge. Did you ever know which plaintiffs
8 that you were talking about in paragraph 108 or
9 you just never have known?

10 A: It's been so many plaintiffs over the years,
11 and I don't want to testify to something that
12 I don't have in front of me. It's been ---

13 Q: Okay.

14 A: --- numerous discovery, numerous paper work
15 over 10-12 years.

16 Q: Okay. How many plaintiffs have foreclosed on
17 you, sir?

18 **MR. BARNES:** Object to the form.

19 Q: How many foreclosure lawsuits have you had
20 filed in connection with this loan?

21 A: This is, how many foreclosure lawsuits?
22 Second.

23 Q: Okay. So, the first one that you mentioned to
24 me was GMAC, correct?

25 A: Correct.



1 note from Peoples Choice.

2 Q: Okay, anything else that you contend GMAC did
3 that was fraudulent foreclosure document?

4 A: There's, again, they assigned the mortgage and
5 the note in a one page document.

6 Q: Okay.

7 A: I mean the mortgage.

8 Q: Okay, and you think that's fraudulent?

9 A: Well, they never owned the note.

10 Q: Okay, and what makes you think they never owned
11 the note?

12 A: In previous deposition, the attorney said GMAC
13 was the servicer.

14 Q: Okay. Anything that the current plaintiff has
15 done that you alleged to be fraudulent
16 foreclosure document?

17 A: Without having it in front of me, I can't
18 answer it for certain.

19 Q: Okay. What would you need in front of you?

20 A: The file from the beginning.

21 Q: Okay. What I'm asking you is, you have
22 alleged, you've made some very serious
23 allegations about fraud. Do you know what
24 fraud is?

25 A: I'm 50 years old. I understand the word fraud,



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1 evidence do you have of that? I'm not asking
2 you to draw any legal conclusions. So, let me
3 ask you again, what foreclosure documents do
4 you believe have been filed in this case,
5 beside the assignment that you mentioned from
6 GMAC?

7 A: Again, I think the note of allonges.

8 Q: Okay, tell me how the note allonges were
9 fraudulent?

10 A: The right, proper representation of signatures.

11 Q: Okay, and what do you mean by that?

12 A: We have different signatures.

13 Q: We have? Well, who do you mean, we?

14 A: Us. You guys sent to us, we have.

15 Q: Okay. Who's signatures are different?

16 A: One, in the person that endorsed the note, the
17 allonges.

18 Q: Okay. Well, we have the allonges in the
19 record, if you'll look at Exhibit Number 2, I
20 believe it is. It might be 3. You'll find the
21 note and allonges. Now, there we go. Did you
22 find the allonges?

23 A: I have.

24 Q: Okay, tell me which ones? There's one, two,
25 three, four, five allonges. Tell me which ones



1 that's signed by Elizabeth Foust?

2 A: Again, GMAC was the servicer.

3 Q: Okay, so, you think that they can't sign an
4 allonge to a note because they're the servicer?
5 That's why you think it's fraudulent?

6 A: I'm looking at the rest of the notes, I mean
7 the rest of the allonge and it appears to be,
8 from, what, what's the alleged owner of the
9 note.

10 Q: We have six other, is there any other way that
11 you believe that the allonge to the note, GMAC
12 number 0359522979 is fraudulent?

13 A: I just, I just explained my position to you.

14 Q: Okay, is there anything else about it that's
15 fraudulent? That's what I'm asking you?

16 **MR. BARNES:** Object to the form.

17 A: I'm not an attorney. That's what, that's what
18 I see.

19 Q: Okay. Do you have any other facts or evidence
20 of fraudulent foreclosure documents, other than
21 this one allonged?

22 A: We have two with Cynthia Brock.

23 Q: Okay. Two allonges that are signed by Cynthia
24 Brock?

25 A: Correct.



1 Q: It's not the answer I want. It's the answer to
2 the question. Either there is something else
3 fraudulent about the allonges that you know
4 about, or there isn't, or you don't know if
5 there is or isn't?

6 A: That's what I see. That's what I see on the
7 two allonges.

8 Q: Okay. Other than what you've seen, is there
9 anything else on the allonges, any of them,
10 that you believe to be fraudulent?

11 A: I can not answer the question.

12 Q: Okay. And, why can't you?

13 A: Because I can't. I don't have the information
14 to provide the answer.

15 Q: Okay, so you don't know, as you sit here right
16 now?

17 A: If I could see anything else, I mean I am not
18 an attorney. I mean I hired attorneys to
19 represent me, so you asking me to answer
20 questions that I hired two attorneys to get
21 answers for.

22 Q: Yeah, I understand that. But, it's important
23 for me to know what knowledge you have of the
24 facts and the evidence in this case, because
25 you are the one who has filed an answer and



- 1 Q: Okay. That, so, as you sit here today, do you
2 know of any other fraudulent assignments,
3 besides the one from GMAC?
- 4 A: I can't answer that because I don't have the
5 rest of them in front of me.
- 6 Q: Okay. What would you need in front of you?
- 7 A: The assignments.
- 8 Q: Every assignment?
- 9 A: If you're asking me that question.
- 10 Q: Well, you knew about the GMAC one off the top
11 of your head.
- 12 A: That was a ---
- 13 Q: So, I'm wondering if you know about anymore.
14 If you don't know, that's fine. Just tell me
15 you don't know.
- 16 A: I've answered the question. I've answered the
17 question.
- 18 Q: You haven't.
- 19 **MR. BARNES:** Object to the form.
- 20 Q: But you will before we're done. Okay, do you
21 know of any other fraudulent assignments, other
22 than the GMAC, yes or no?
- 23 A: Without having it in front of me, I can't
24 answer the question.
- 25 Q: All right. How about fraudulent foreclosure



1 unilaterally modified. What evidence do you
2 have that any plaintiff had actual knowledge
3 that there was a loan that was illegally,
4 unilaterally modified?

5 A: I have no evidence.

6 Q: Okay. Now, if you go to paragraph 109, you
7 allege that all of the various plaintiffs had
8 actual knowledge that they were preparing a
9 fraudulent foreclosure suit. I want to know
10 what evidence you have that any plaintiff in
11 this case, or their counsel, were preparing a
12 fraudulently, a fraudulent foreclosure upon
13 this court?

14 A: Can't answer the question.

15 Q: Okay. You can answer and you -- what evidence
16 do you have, if any, that any plaintiff
17 perpetrated a fraudulent foreclosure on this
18 court? These are very serious allegations, and
19 I need to know what evidence you have.

20 A: Again, I can't answer the question.

21 Q: Why not?

22 A: Because I don't have an answer for the
23 question.

24 Q: Okay. If you guys will give me about five
25 minutes to go back over my notes, I think I'm



EXHIBIT 1

AMS- 0147 12-1 00-0

JNAC # 0359522976
Loan Number 10281247

ADJUSTABLE RATE NOTE
(LIBOR Six-Month Index (As Published In The Wall Street Journal)-Rate Caps)
Including Prepayment Penalty

14978-8

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

01/04/2006
[Date]

IRVINE
[City]

CALIFORNIA
[State]

5505 ROWSHAM PLACE, NORTH CHARLESTON, SOUTH CAROLINA 29418
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 212,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is PEOPLE'S CHOICE HOME LOAN, INC. a WYOMING CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 10.450% . The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the 1st day of each month beginning on March 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on February 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 52678, Irvine, CA 92619 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,831.33 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Date(s)

The interest rate I will pay may change on the 1st day of February, 2008 and every 6th month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

8. GIVING OF NOTICES

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

BK 5 2PG168

WLS

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PEOPLE'S CHOICE HOME LOAN,
INC.
7515 IRVINE CENTER DR.,
IRVINE, CA 92618

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MARGARET L. BAILEY
CONROESTER COUNTY, SC

Hard Low Offices, LLC
105 Wappoo Creek Drive Suite 3B
Charleston, SC 29412

Prepared By:

B
g

28w

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100273900102812475

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated January 4, 2006 together with all Riders to this document.
- (B) "Borrower" is JAMIE SINGLETON

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

10281247

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

6A(SC) 100051.02

Page 1 of 18

Initials: WLS

VMP MORTGAGE FORMS - 1800521-7251

in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the COUNTY of ~~CHARLESTON~~ *Dorchester*:
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT 'A'

Parcel ID Number: 181-10-06-037 which currently has the address of
5505 ROWSHAM PLACE [Street]
NORTH CHARLESTON [City], South Carolina 29418 [Zip Code]
("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. **Release.** Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

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BK 514 1182

STATE OF SOUTH CAROLINA,
County of Charleston

Personally appeared before me Kirkland Smith
and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage and that he/she with Joseph Hand, witnessed the execution thereof.

[Signature]
Notary Public

Sworn to before me this 4th day of January, 2005

My Commission Expires: 01/04/10

[Signature]
Notary Public for South Carolina

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(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and nine tenth(s) percentage points (6.900%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 13.450 % or less than 10.450 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage points (1.000%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 16.450%. My interest rate will never be less than 10.450%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest Borrower. As used in this Section 18, "interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BK 5142, 186

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 4th day of January, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to People's Choice Home Loan, Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
5505 ROWSHAW PLACE, NORTH CHARLESTON, SOUTH CAROLINA 29418

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

(the "Declaration"). The Property is a part of a planned unit development known as Indigo Fields

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. **PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

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MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01

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VMP MORTGAGE FORMS - (800)521-7291

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Jamie Singleton (Seal) _____ (Seal)
JAMIE SINGLETON -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

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(MP-7R 10008)

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AMS- 04978-0000

GNAC # 0359522979
Loan Number 10281247

ADJUSTABLE RATE NOTE
(LIBOR Six-Month Index (As Published In The Wall Street Journal)-Rate Caps)
Including Prepayment Penalty

14978-8

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

01/04/2006 IRVINE CALIFORNIA
[Date] [City] [State]

5505 ROWSHAM PLACE, NORTH CHARLESTON, SOUTH CAROLINA 29418
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 212,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is PEOPLE'S CHOICE HOME LOAN, INC. a WYOMING CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 10.450% . The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the 1st day of each month beginning on March 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on February 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 52678, Irvine, CA 92619 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,931.33 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Date(s)

The interest rate I will pay may change on the 1st day of February, 2008 and every 6th month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."



6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

8. GIVING OF NOTICES

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

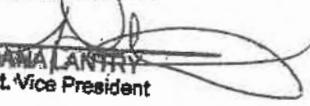
If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

PAY TO THE ORDER OF

WITHOUT RECOURSE
PEOPLE'S CHOICE HOME LOAN, INC.
A Wyoming Corporation

By 
DANA LANTY
Title: Asst. Vice President

Loan # 0005003310

ALLONGE TO NOTE

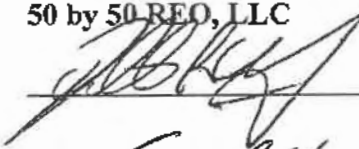
BORROWER NAME: Jamie Singleton
NOTE DATE: January 4, 2006
LOAN AMOUNT: \$212,000.00
INTEREST RATE: 10.45% adjustable
FIRST PAYMENT DUE: March 1, 2006
MATURITY DATE: February 1, 2036

PAY TO THE ORDER OF: US BANK, N.A., AS TRUSTEE OF THE FRT 2011-1 TRUST

WITHOUT RECOURSE and without representation or warranty except as set forth in that certain Assignment of Note and Mortgage dated of even date herewith from Jamie Singleton in favor of 50 by 50 REO, LLC.

Signed in the presence of:

50 by 50 REO, LLC


By: TIMOTHY R. HARBMAN

Title: ASST VICE PRESIDENT

AMS SERVICING, LLC AS ATTORNEY IN FACT

3310

170954046

ALLONGE TO NOTE

Borrower: **Jamie Singleton**
Date: _____
Amount: **\$212,000.00**
Property Address: **5505 Rowsham Place, North Charleston, SC 29418**

Pay to the order of _____, without recourse.

Executed this 4th day of September, 2014.

FRT 2013-1 INVESTOR LLC

By: 
Name: DeWayne Chin
Title: Authorized Signatory



170954046

SINGLETON
NOMU

1031
SEC2012-PRIV

9

Borrower Name: Jamie Singleton
Property Address: 5505 Rowsham PI5505 Rowsham PI
Loan#: 555850755

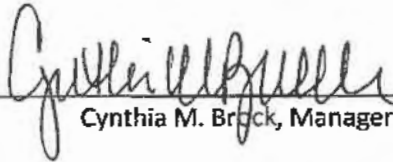
ALLONGE TO NOTE

PAY TO THE ORDER OF:

WestVue NPL Trust II

By:

Wilmington Savings Fund Society, fsb d/b/a Christiana Trust, not in its individual capacity but solely in its
capacity as Certificate Trustee for NNPL Trust Series 2012-34


Cynthia M. Brock, Manager

(D) "Lender" is People's Choice Home Loan, Inc.

Lender is a CORPORATION organized and existing under the laws of WYOMING Lender's address is 7515 IRVINE CENTER DR., IRVINE, CA 92618

(E) "Note" means the promissory note signed by Borrower and dated January 4, 2006 The Note states that Borrower owes Lender TWO HUNDRED TWELVE THOUSAND AND 00/100

Dollars (U.S. \$212,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 1, 2035

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"); (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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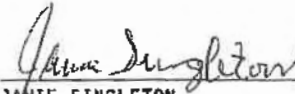
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:




JAMIE SINGLETON (Seal)
-Borrower


_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

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**ADJUSTABLE RATE RIDER
(LIBOR Six-Month Index (As Published In The Wall Street Journal)-Rate Caps)**

THIS ADJUSTABLE RATE RIDER is made this 4th day of January, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to PEOPLE'S CHOICE HOME LOAN, INC. a WYOMING CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

5505 ROWSHAM PLACE, NORTH CHARLESTON, SOUTH CAROLINA 29418
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 10.450%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of February, 2008 and on that day every 6 month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an index. The "index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

OR 514: 185

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial prepayment may be offset by an increase in the interest rate.

If within Twenty-four (24) months from the date of execution of the Security Instrument, I make full Prepayment or partial Prepayment, and the total of such Prepayment(s) in any 12-month period exceeds twenty percent (20%) of the original Principal amount of the loan, I will pay a Prepayment charge in an amount equal to 6 months' advance interest on the amount by which the total of my Prepayment(s) within that 12-month period exceeds twenty percent (20%) of the original Principal amount of the loan.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Jamie Singleton (Seal) _____ (Seal)
JAMIE SINGLETON -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

BK 5142PG187

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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Page 2 of 3

Initials: JLS

Form 3150 1/01

01541

PAY TO THE ORDER OF

~~WITHOUT RECOURSE~~
PEOPLE'S CHOICE HOME LOAN, INC.
A Wyoming Corporation

By 
DANA LANTRY
Title: Asst. Vice President

I. ANSWERS TO THE ALLEGATIONS OF THE COMPLAINT

1. Defendant (Singleton only) admits No. 1 of complaint.
2. Defendant denies No. 2 of Complaint and demands strict proof thereof.
3. Defendant denies No. 3 of Complaint.
4. Defendant requires a more definitive statement to No. 4 of Complaint before it can answer. Defendant does not know who the servicer is and does not know the investor mentioned in No. 4. Further, No. 4 of Complaint as it is stated is a violation of the ***Administrative Order of Chief Justice Toal dated May 22, 2009 RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP) and the Administrative Order Re: Mortgage Foreclosure Actions, May2, 2011***

No. 4 of Complaint states that Modification attempts cannot be completed and have not been completed per the requirements of the ***Administrative Order*** mentioned above. Therefore, because of the defects admitted in No. 4 of Complaint, the Complaint states a claim where relief cannot be granted and this case should be dismissed under Rule 12-b-6, SC Rules of Civil Procedure and/or this case should be stayed per the said ***Administrative Orders*** until the investor gives the servicer the authority to negotiate and actually does negotiate a mortgage modification in this case.

5. Defendant admits No. 5 of Complaint.
6. With regards to No. 6 of Complaint, Defendant admits Defendant Indigo Pointe may have a lien on the subject property. Defendant Singleton does not admit the validity of any such lien filed on his property by Co-Defendant Indigo Pointe.
7. Defendant admits that he signed such a promissory Note as mentioned in No. 7. To non-party People's Choice Home Loans, Inc. Defendant does not admit the validity of such Note or that the Plaintiff has any right to enforce said Note.
8. Defendant admits that he signed a Mortgage in favor of Non-parties MERS, Inc. and People's Choice Home Loan, Inc. as noted in No. 8 of Complaint. Defendant denies the validity of Plaintiff to enforce such Mortgage.
9. Defendant admits No. 9 that all the documents were recorded as such. Defendant denies the remainder of No. 9 as far as validity of all the documents.
10. Defendant denies No. 10 of Complaint.
11. Defendant requests a more definitive statement as to No. 11 of Complaint as No. 11 of Complaint does not actually state whether Plaintiff or its agents sent any Notices to the Defendant.
12. Defendant is without information and belief sufficient to admit or deny No. 12 of Complaint, and therefore, denies same, and demands strict proof thereof.
13. Defendant denies No. 13 of Complaint that Plaintiff has the right to demand such deficiency balance. Defendant need not admit or deny No. 13 of Complaint as it is a prayer for relief. Plaintiff's predecessor in interest, GMAC Mortgage, LLC, waived its right to a deficiency against Mr. Singleton in this Court in case number 2008-CP-18-871. Therefore, judicial estoppel should apply in this case.
14. Plaintiff admits No. 14 of Complaint that counsel has been hired by the servicer. Defendant denies the remainder of No. 14 of Complaint.

V. AFFIRMATIVE DEFENSE- INSURANCE

28. Defendant repeats §1-27 of this Answer as if repeated verbatim right here.
29. Defendant asserts that that is mortgage is a securitized mortgage loan trust, and that in connection with the formation thereof and pursuant to applicable rules and regulations of the Securities and Exchange Commission, one or more insurances was/were placed on the loan the subject hereof in connection therewith. Such insurances, and other credit enhancements available to the securitized mortgage loan trust, provide benefits on default by the borrower with no recourse or subrogation against the borrower. To the extent that any benefits were paid on default as a result of available credit enhancements or other insurances, Defendant is entitled to a setoff as to any amounts claimed due by Plaintiff herein.

VI. AFFIRMATIVE DEFENSE- UNCLEAN HANDS

30. Defendant repeats §1-29 of this Answer as if repeated verbatim right here.
31. Plaintiff has brought this case forward with unclean hands and should be barred from relief under the equitable doctrine of unclean hands.

VII. AFFIRMATIVE DEFENSE- WAIVER AND LACHES

32. Defendant repeats §1-31 of this Answer as if repeated verbatim right here.
33. Defendant asserts the defense of waiver and laches in this case, especially with regards for the right of Plaintiff to recover a deficiency balance in this case. GMAC Mortgage, LLC, alleged former holder and owner of the Note and Mortgage the subject of this case, waived a deficiency balance on the Note and Mortgage in this case when they sued Defendant Singleton before this Court in 2008 in case number 2008-CP-18-871. This waiver should be held in this equity court against the Plaintiff in this matter.

VIII. AFFIRMATIVE DEFENSE- BAD FAITH AND UNFAIR DEALING RE:
ADMINISTRATIVE ORDER

34. Defendant repeats §1-33 of this Answer as if repeated verbatim right here.
35. Defendant alleges that Plaintiff has failed to act in good faith that is required in the foreclosures of primary residences with regards to the *Administrative Order Re: Mortgage Foreclosures* dated May 2, 2011. Plaintiff offered a Defendant a “take it or leave it” mortgage modification offer and, as a result, the Defendant believes Plaintiff has

43. In A 2008 case for foreclosure, Plaintiff's predecessor in interest, GMAC, LLC filed a waiver of deficiency on the mortgage that is the subject of this action. Judicial estoppel should be applied preventing Plaintiff from demanding a deficiency balance in this case.

XIII. AFFIRMATIVE DEFENSE- RESERVATION OF DEFENSES

44. Defendant repeats §1-43 of this Answer as if repeated verbatim right here.
45. Defendant reserves all other defenses that have not come to light at this time.

COUNTERCLAIM-QUIET TITLE

The answering Defendants, Jamie Singleton, as Counter-Plaintiff, counterclaim against the Plaintiff, for Declaratory and Injunctive Relief, and state as follows in support thereof:

A. Parties and Jurisdiction

46. This is an action for declaratory and injunctive relief which is properly within the jurisdiction of this Court as provided by applicable statutes and rules of court.

47. Counter-Plaintiff is and was at all times material *sui juris* residents of the State of South Carolina over the age of eighteen (18) and who are the legal owners of the residential real property the subject of this action located at located at 5505 Rowsham Place, North Charleston, South Carolina 29418 Dorchester County, (hereafter the "Property").

48. Plaintiff is and was at all times material hereto an entity whose corporate structure is unknown and which purports to be in an alleged trust relationship with an LLC owned and controlled by a Wall Street banking institution, which has subjected itself to the jurisdiction of this Court through the filing of the main action herein.

transfer anything, and thus the true owner and holder of the Note and Mortgage are unknown. Rule 17(a), South Carolina Rules of Civil Procedure require that “every action shall be prosecuted in the name of the real party in interest.”

COUNT I: DECLARATORY RELIEF

56. Counter-Plaintiffs reallege and reaffirm paragraphs 1 through 10 hereinabove as if set forth more fully hereinbelow.

57. This is an action for declaratory relief which is brought pursuant to SC Code. 15-53-10 *et seq.*

58. Pursuant to SC Code 15-53-20, this Court has the power and authority to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

59. Pursuant to SC Code 15-53-30, any person interested under, *inter alia*, a deed or written contract or other writings constituting a contract or whose rights, status, or other legal relations are affected by a contract may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status, or other legal relations thereunder.

60. SC Code 15-53-130 provides that the chapter is declared to be remedial and its purpose to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

61. Plaintiff and Defendant Singleton are “persons” within the meaning of SC Code 15-53-30.

62. Defendant Singleton is a person who have an interest under a deed to the Property and the mortgage loan contract and whose rights and status have been affected by the Plaintiff’s actions. Defendant is thus entitled to have determined the question of their

CROSS CLAIM AGAINST CROSS-DEFENDANTS

A. Parties, Jurisdiction and Venue

69. This is an action for Declaratory Relief which is a proper Counterclaim to the main action, and the Cross-Claims are proper within this Court as the operative facts giving rise to the claims for relief arose out of the same series of transactions related to the same mortgage loan and the same borrower (Mr. Singleton).

70. Counter- and Cross-Plaintiff JAMIE SINGLETON is and was at all times material hereto a *sui juris* resident of the State of South Carolina over the age of eighteen (18), and is a Defendant in the main action.

71. Counter-Defendant US BANK NA AS TRUSTEE FOR FRT 2011-1 (hereafter "USB") is and was at all times material a foreign (non-South Carolina incorporated) private equity investment bank which did business in the State of South Carolina and invoked the jurisdiction of this Court by filing the main action which seeks to foreclose on the mortgage loan the subject of both the main action and this action prior to assigning their interest in the Note and Mortgage to the current Plaintiff.

72. Cross-Defendant NOMURA HOLDINGS, INC. (hereafter "Nomura") is and was at all times hereto a foreign (non-South Carolina incorporated) subsidiary holding company of Nomura Bank, which is a Japanese banking concern. Nomura claims to have purchased the mortgage loan the subject of this action from the original lender, that being People's Choice, and claims to have sold the loan to Cross-Defendant 50 BY 50 REO LLC.

73. Cross-Defendant 50 By 50 REO LLC (hereafter "50 By 50") is and was at all times material hereto a New York limited liability company which claims to have come into ownership of the mortgage loan the subject of this action.

transferring an interest in the mortgage loan the subject of this and the main action to Plaintiff/Counter-Defendant USB constitutes the type of single act which has caused harm to Counter/Cross-Plaintiff in South Carolina as the foreclosure arises out of and relates to the acts of the Cross-Defendants as set forth below, thus establishing the minimum contacts necessary to hale the Cross-Defendants into this Court.

80. Further, the relief sought is Declaratory relief, which requires the joinder of any party which may have an interest in the outcome of the claim. The State of South Carolina thus has an interest in exercising jurisdiction over the Cross-Defendants, the acts of whom gave rise to the assertion of the foreclosure claim by Counter-Defendant USB. There is no inconvenience for the Cross-Defendants in this action and even if claimed, the inconvenience to Counter/Cross-Plaintiff with any severance of any claim as to any Cross-Defendant greatly outweighs any claim of prejudice to any of the Cross-Defendants. Further, severance of any claim as to any Cross-Defendant would unduly complicate this litigation and result in the possibility of inconsistent verdicts or orders.

81. All actions of the Counter-Defendant and the Cross-Defendants were directed toward and had their effects in South Carolina, and were intended by the Counter-Defendant and Cross-Defendants to be directed toward South Carolina.

B. Background Facts

82. Counter/Cross-Plaintiff originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

83. On January 15, 2009, Counter/Cross-Plaintiff received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the

Defendant, US Bank, NA, as Trustee. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as “nominee” for the bankrupt People’s Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Counter-Defendant.

90. Further, Cross-Defendant US BANK, NA AS TRUSTEE FOR FRT 2011-1 filed a Motion to Substitute Plaintiff to current Plaintiff while waiting to record two assignments of Mortgage which the Court granted from the bench on February 29, 2016.

91. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to Cross-Defendant 50 By 50 or to US BANK, NA AS TRUSTEE FOR FRT 2011-1 or to current Defendant.

92. If Cross-Defendant Nomura sold the loan to Cross-Defendant 50 By 50, there was nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008; conversely, if Cross-Defendant MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy), Cross-Defendant Nomura did not sell the loan to Cross-Defendant 50 By 50, and the loan remained in the inventory of People’s Choice, which had filed bankruptcy.

93. If the loan was a retained asset within the inventory of People’s Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Cross-Defendant Nomura to sell to Cross-Defendant 50 By 50 on September 27, 2007, and nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008.

dated October 23, 2014, and there is no document which states that the loan was sold from NNPL to New Penn.

99. By letter from Cross-Defendant Shellpoint dated January 16, 2015, Shellpoint advised Mr. Singleton that the servicing of the loan was being transferred from Shellpoint to Cross-Defendant FCI as of February 5, 2015. It is unknown whether, in connection with the transfer of servicing, whether the loan itself was sold again, nor does this letter identify the current owner of the loan. If the loan is owned by Cross-Defendant NNPL, Cross-Defendant Shellpoint was identified as the servicer.

100. Although the loan documents provide that the loan may be "sold", there is no disclosure in the loan documents that the loan may be sold from a Federally-regulated mortgage lender to an unregulated private equity investment entity (Plaintiff herein).

101. The alleged residential mortgage loan herein was thus converted to a commercial investment transaction by which the obligation evidenced by the promissory Note was converted to a vehicle for the purpose of providing an income-stream to fund a commercial investment for the benefit of non-parties to the "loan", thus changing the essential character of the Note and the loan without any disclosure to or consent of Mr. Singleton, and without any additional consideration being provided to Mr. Singleton. These facts were intentionally withheld from Mr. Singleton in order to induce him to enter into the alleged loan transaction and continue to make payments thereon.

102. At all times material, all of the various alleged owners of the loan and Plaintiff herein had actual knowledge that the intended use for the "loan" was to be, in truth and in fact, a vehicle for providing a revenue stream, together with hundreds of other alleged "residential"

105. The change in character of the Note from what was represented to be a residential mortgage loan to a commercial investment also involved the addition of one or more third-party “servicers” which destroyed the direct relationship between Mr. Singleton and the alleged true “lender”, especially as the loan became part of the securitization trust almost immediately after the Note and Mortgage were signed. These facts were not disclosed to Mr. Singleton and were intentionally withheld from him in order to induce him to enter into the alleged loan transaction and continue to make payments thereon, and the change in character of the Note was a unilateral act without disclosure to or consent of Mr. Singleton which has operated to his detriment and damage.

106. The conversion of the Note from what was represented to be a residential mortgage loan to a commercial investment, which was then pooled with thousands of other loans and placed into numerous tranches of a securitization trust together with other loans, resulted in the loan being inextricably intertwined with other loans, resulted in a unilateral change of the character of the Note which was never consented to by Mr. Singleton; which was never disclosed to Mr. Singleton; and was intentionally withheld from Mr. Singleton in order to induce him to enter into the alleged loan transaction and continue to make payments thereon.

107. At all times material, all subsequent alleged “owners” of the loan had actual knowledge that the alleged “loan” obligation (which was actually a commercial investment vehicle to provide an income stream to benefit third parties not associated with the property and with no obligation to Mr. Singleton), was fully insured through numerous avenues, including but not limited to specialized insurances such credit default swaps, first loss reserves, and other sources which provided payment on the income stream in the event of a default, which insurances and sources were in fact funded by borrower payments on the alleged loan obligation.

determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

114. It is without dispute that the Note and Mortgage are contracts in which Counter/Cross-Plaintiff has an interest.

115. It is also without dispute that the actions of the Counter-Defendant and Cross-Defendants set forth above have affected the rights of the Counter/Cross-Plaintiff in the Note and Mortgage contracts, and that the claims of the Counter- and Cross-Defendants are conflicting and ambiguous. Further, there was no identification of who Shellpoint was servicing the loan for.

116. S.C. Code Ann. Sec. 15-53-20 provides that courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed, and that no action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. It is without dispute that this Court has jurisdiction over this action for declaratory relief and may grant the relief requested.

117. S.C. Code Ann. sec. 15-53-130 provides that the Declaratory Judgments Act is declared to be remedial with its purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

118. S.C. Code Ann. sec. 15-53-40 provides that a contract may be construed either before or after there has been a breach thereof.

119. S.C. Code Ann. sec. 15-53-80 provides that when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the

for the reasons set forth above, and for any other and further relief which this Court deems just and proper.

Dated this 29th day of July, 2018.

s/William H. Sloan
William H. Sloan, Esq.
Attorney for Jamie Singleton
Post Office Box 85
Summerville, SC 29484
Tel: 843-873-7531
whs@sloanlawfirm.net

July 29, 2018

Deposition of:

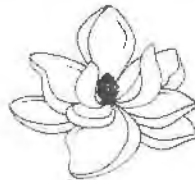
**U.S. Bank Trust NA as Trustee for Waterfall Victoria
Grantor Trust II, Series G**

v.

**Jamie Singleton and Indigo Pointe Homeowners'
Association**

Case #: 2011-CP-18-00871

October 12, 2022



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) CASE NO.: 2011-CP-18-00871

U.S. Bank Trust NA as Trustee)
for Waterfall Victoria Grantor)
Trust II, Series G,)

Plaintiff(s),)

vs.)

TRANSCRIPT OF RECORD

Jamie Singleton and Indigo)
Pointe Homeowners')
Association,)

Defendant(s).)

PRESIDING JUDGE: The Honorable James E. Chellis
Master in Equity

DATE TAKEN: October 12, 2022

SCHEDULED TIME: 10:00 A.M.

PLACE: Dorchester County Courthouse
5200 East Jim Bilton Blvd.
St. George, SC 29477

REPORTED BY: HEATHER R. LANDRY, CVR
Certified Verbatim Reporter

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Plaintiff's Exhibit No. 6 - Worksheet	18
*Exhibit retained by Plaintiff's Counsel to submit to the Court	

1 (The hearing commenced at 11:19 a.m.)

2 THE COURT: This is the matter U.S. Bank
3 Trust NA as Trustee of Waterfall Victoria Grantor Trust
4 II, Series G, the Plaintiff, against Jamie, that's
5 J-A-M-I-E, Singleton and Indigo Pointe Homeowners'
6 Association, Defendant. We are here today on the
7 plaintiff's motion for summary judgment. And the civil
8 action number for this cases 2011-CP-18-00871. Present
9 today on behalf of the plaintiff -- and I'll recognize
10 plaintiff's counsel now, to announce herself and her
11 companion.

12 MS. WOOTEN: Your Honor, good morning.
13 Kim Wooten with McMichael Taylor Gray on behalf of
14 plaintiff. And with me is Brian Campbell also on
15 behalf of the plaintiff.

16 THE COURT: Thank you very much,
17 Ms. Wooten. And we also have for the defendant
18 Mr. Sloan who is attending in person. Go ahead
19 Mr. Sloan, give me your name.

20 MR. SLOAN: Good morning, Your Honor.
21 Williams Sloan, S-L-O-A-N, for Defendant Jamie
22 Singleton.

23 THE COURT: And also attending on behalf
24 of the defendant is attending virtually is Mr. Barnes.
25 Have you introduce yourself, Mr. Barnes.

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1 MR. BARNES: Jeff Barnes co-counsel for
2 Mr. Singleton. And, Your Honor, I didn't hear anything
3 Ms. Wooten said, if she said it.

4 (Brief pause to address technical
5 issues.)

6 THE COURT: All right. I recognize
7 Ms. Wooten at this time.

8 MS. WOOTEN: Good morning, Your Honor.
9 As I said -- may it please the Court? My name is
10 Kim Wooten and I'm here on behalf of the plaintiff
11 today. Jeff, can you hear me okay now?

12 THE COURT: Can you hear her, Jeff?

13 MR. BARNES: I hear nothing.

14 (Brief pause.)

15 MS. WOOTEN: Mr. Barnes, can you hear me
16 now?

17 MR. BARNES: Perfectly.

18 MS. WOOTEN: Oh, great. Okay. Good
19 morning. Your Honor, as I said, I'm here on behalf of
20 the plaintiff today. We have filed a motion for
21 summary judgment in this case. As Your Honor probably
22 is aware, this case has been pending for 11 years now.
23 This defendant has been living in his home for 11 years
24 without paying any mortgage payments. Other than over
25 a hundred thousand dollars that he's testified he's

1 paid in attorney fees, he has not paid anything to live
2 in this home.

3 I think it's important for us just to go
4 through briefly what the facts are. I know that Your
5 Honor is familiar with this case. But just briefly,
6 the note and the mortgage that Mr. Singleton signed in
7 this case was signed in 2006 and entered into in 2006.
8 The principal amount of that time was \$212,000 plus
9 some change. It was an adjustable rate note and
10 mortgage, and it was signed on January 4, 2006, by
11 Mr. Singleton. Both the note and mortgage were filed
12 of public record. And we have attached a copy of the
13 original note and original mortgage to our motion.
14 And, of course, those are public record. We also have
15 filed an affidavit along with our motion where those
16 documents are identified as copies of the original note
17 and mortgage.

18 If Your Honor recalls earlier in this
19 case, Mr. Barnes had filed a summary judgment motion.
20 And Your Honor had ruled that Mr. Barnes was entitled
21 to go and examine the original note. So we did have
22 the original note, and we do have attached to our
23 motion the bailee letters. And they're also attached
24 to the defendant's response to the motion showing where
25 the original note and mortgage were sent from various

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1 entities to our law firm. So we produced that original
2 note, Your Honor, in Florida and allowed Mr. Barnes to
3 inspect that note as Your Honor had ordered. And also
4 he took his client to inspect the note.

5 So in accordance with Your Honor's
6 discovery order, I also took the deposition of
7 Mr. Singleton. And that deposition, I believe, changed
8 the landscape of this case. In that we have produced
9 the original note, I introduced at the deposition the
10 original note and the original mortgage. I went
11 through every single page, all of the relevant terms.
12 I went through -- I went through the signature pages,
13 all of the initials. Mr. Singleton identified that
14 copy of the original note and mortgage as the ones that
15 he had signed. Later on in his deposition he went back
16 and tried to say, well, the one I signed in Florida was
17 on white paper and I'm not sure. But, by in large, the
18 important thing is he recognized that original note and
19 mortgage and identified his initials and signature on
20 that original note and mortgage. So those are attached
21 to our motion.

22 Then the other thing that we've attached
23 that's important for the Court I think to see is
24 Exhibit A to our motion, which is selected deposition
25 excerpts from Mr. Singleton's deposition showing that

1 he had identified the note, identified the mortgage.
2 He also admitted in his deposition, and we have
3 included that excerpt, that he would pay this mortgage
4 if he just knew who owned the note. And they have gone
5 on ownership all along in this case, who owns the note,
6 and admitted that he defaulted on the note, that he
7 defaulted on his payments back in 2010. That's on the
8 record as well. And, as I said, his testimony was he
9 would pay it if he knew who owned the note. So I think
10 that's the way the deposition sort of changed the
11 landscape of this case, included in a position that we
12 believe we're entitled to summary judgment.

13 Brian, could you bring my water?

14 (Brief pause.)

15 MS. WOOTEN: All right. Now, as far as
16 the summary judgment standard, of course the parties
17 seeking the foreclosure has the burden of proof to
18 prove two things in South Carolina. One is the
19 existence of the debt; and number two, of course, is
20 the default on the debt. And in this case we have an
21 admission by Mr. Singleton that he owes the debt.
22 That's in his deposition excerpt as well. And he's
23 also admitted the default.

24 So by producing the original note and
25 producing Mr. Singleton's testimony about the original

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1 note and mortgage and about the default, we have met
2 our prima facie case for summary judgment. But in more
3 support of that, we have other evidence and law that
4 I'd like to turn the Court's attention to.

5 First of all, there's been an argument
6 made in the response to the summary judgment that we
7 have to negate affirmative defenses. That is not the
8 law in South Carolina. We just have to prove our prima
9 facie case then the burden shifts to the defendant to
10 prove any affirmative defenses and counterclaims that
11 they may have. So it's our burden to negate their
12 defenses even though we have addressed some of those in
13 our motion, in our brief. And I'll address a few
14 things now that I think are important.

15 The borrower has to show specific facts
16 establishing any differences that they might have.
17 Those facts must be admissible, of course, just like
18 they would be in a trial. And at this point, our prima
19 facie case again has been established we think without
20 any doubt and with our competent evidence. The only
21 real defense that has been asserted in the response is
22 lack of standing. That is what they're now hanging
23 their hat on. It's been sort of a moving target as
24 this case has progressed. Right now the major defense
25 that they're hanging their hat on is that we don't have

1 standing because we don't own the note. And I'm
2 reading directly from their argument where they say the
3 only -- just one second -- yes. It's the ownership of
4 the note that matters and that we don't have standing
5 because we are not the owners of the note. We don't
6 agree that we're not the owners of the note, but that's
7 what they've said. And they've tried to -- they
8 produced about 30 pages in their brief of deposition
9 excerpts trying to show that there is some doubt as to
10 who is the owner of this note. But under South
11 Carolina law, the important thing is who holds the
12 note.

13 There are three types of standing in
14 South Carolina that we look at. One is constitutional
15 standing, which doesn't apply here. The other is
16 statutory standing, which is the one that does apply
17 here. And the other one is that public importance type
18 standing, which does not apply here as well. In the
19 language of our UCC, which is different -- I understand
20 Mr. Barnes practices in a lot of different states, but
21 ours is different from some of the other states.
22 36-33-01 provides the guidance for who is entitled to
23 enforce an instrument. And that statute reads,
24 "Persons entitled to enforce an instrument means, one,
25 the holder of the instrument or, two, a non-holder who

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1 has the right to enforce the instrument."

2 So here what we're looking at is
3 possession of the note and being the holder. The
4 holder is possession. And if you look at the Draper
5 case, Bank of America versus Draper, the South Carolina
6 court settled in 2013 the question of who is entitled
7 to enforce a note. In that particular case, the note
8 and mortgage were held by the servicer. And the Court
9 held that because the servicer held the note, held
10 possession of the note and the mortgage, they were
11 entitled to enforce it. I do have a copy of the Draper
12 case if Your Honor would like. You're familiar with
13 it?

14 THE COURT: I am familiar with that.

15 MS. WOOTEN: I gotcha. So in this case,
16 in our affidavit, we show that we are the current
17 holder of the note and the mortgage.

18 THE COURT: Which affidavit are you
19 talking about?

20 MS. WOOTEN: It's the affidavit that was
21 attached to our motion as Exhibit D.

22 THE COURT: Okay.

23 MS. WOOTEN: We have an affidavit from
24 our servicer who testifies in the affidavit that the
25 note and mortgage are held by the plaintiff. And

1 they're actually now in our possession as counsel for
2 the plaintiff. So that really is the only important
3 thing that we have to establish here that we have
4 standing, and we do have standing.

5 From the beginning of this case, Your
6 Honor, the defendant has tried to throw I think enough
7 stuff on the wall hoping something is gonna stick. But
8 even after reading all through the pages of some
9 deposition testimony, nothing has been presented that
10 is enough to overcome our summary judgment prima facie
11 case. We also address in our brief some of the other
12 defenses that Mr. Barnes and Bill have not raised in
13 their response like judicial estoppel. I guess those
14 defenses are abandonment at this point if we have to
15 argue them. Certainly we can. But the main one was
16 standing argument.

17 The defendant also has argued in its
18 response that summary judgment must be denied where
19 there is conflicting evidence. While the law is that
20 the Court is not supposed to judge about conflicting
21 evidence, the conflicting evidence has to be material,
22 just like when I prove my summary judgment has to be
23 genuine issue of material fact. In any conflicts in
24 the evidence that they have shown -- for example, early
25 on in the case, and you probably remember this or may

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1 remember this from being involved in the case
2 previously, there was a loss note affidavit that was
3 filed by one of our predecessors. Our witness does not
4 know why that predecessor filed a loss note affidavit.
5 But that conflict or supposed conflict is of no import
6 in the case because we have the original note, we have
7 the baby letter showing the original note.

8 Mr. Singleton has admitted that the copies that I
9 showed him of the original are the ones that he signed.
10 So, really, it's immaterial whether somebody else in
11 the past has filed a lost note affidavit or not.

12 Oh, and Your Honor, also in our
13 affidavit and in Exhibits 13 and 14 that were produced
14 by the defendant in connection with their motion --

15 THE COURT: Tell me the affidavit you're
16 speaking of?

17 MS. WOOTEN: The affidavit that we filed
18 on our motion.

19 THE COURT: D?

20 MS. WOOTEN: Exhibit D. Yes, sir. I'm
21 sorry.

22 THE COURT: Well, you better make your
23 record. We don't make the record. So let's make it
24 clear --

25 MS. WOOTEN: Yes, sir.

1 THE COURT: -- what you're talking
2 about.

3 MS. WOOTEN: Yes, sir. Exhibit D is the
4 affidavit that we filed, Exhibit D to our motion. And
5 when I refer to our affidavit, I'll be referring to
6 Exhibit D to our motion. Thank you, Your Honor.

7 And again, there's no conflicting
8 evidence about the transfer to this plaintiff as the
9 holder. There is in our Exhibit D affidavit that
10 transfer is shown and it is testified to, and it is
11 also showing the allonges to the note that show the
12 transfers as well.

13 All right. The defendant has also
14 argued in its response that credibility of the
15 witnesses is an issue. Credibility is not something
16 that we decide on. The Court will decide on summary
17 judgment. There is -- I have a case on that if Your
18 Honor is familiar with the fact of credibility of
19 witnesses is not something that is to be decided at
20 summary judgment stage. That's immaterial.

21 And finally, we did want to address that
22 the defendant had argued in its response that we did
23 not produce evidence that this court had ordered in the
24 last motion. And I wanted to -- we did indeed produce
25 all of that evidence. We produced a workbook on Excel

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1 that I wanted to hand up to Your Honor just showing you
2 that we had complied.

3 THE COURT: It's not part of your
4 prefiled document. I mean, you didn't show that to the
5 defendants, did you?

6 MS. WOOTEN: It is not. But I will. I
7 will. Bill, this is the spreadsheets that we sent.

8 (Brief pause.)

9 THE COURT: Do you have any objection of
10 her handing that over?

11 MR. SLOAN: I do not. I do not, Your
12 Honor. I don't have the Court's order on that right
13 handy. But I do remember that Your Honor had said --

14 THE COURT: I ordered that they
15 produce a -- I suggested a format in which they should
16 be produced: name, address, so forth, how they were
17 sent, that sort of thing. And as long as they've
18 complied with the substance of that order, it's not a
19 problem. You've seen what she's showing me already?

20 MR. SLOAN: I have, Your Honor. My one
21 issue with it is that the Court wanted to see the
22 consideration pay for all those transfers that -- the
23 paper doesn't have that.

24 THE COURT: Well, she hasn't stated in
25 her argument yet -- I mean, are you claiming that

1 you're holder in due course?

2 MS. WOOTEN: We hold the note and the
3 mortgage. Yes, Your Honor.

4 THE COURT: But you hold it in due
5 course or not?

6 MS. WOOTEN: Yes.

7 THE COURT: You did? How do you hold it
8 in due course?

9 MS. WOOTEN: Brian, you have -- I'm not
10 sure.

11 THE COURT: He said he wasn't arguing.
12 Tell me.

13 MS. WOOTEN: I'm not certain what you
14 mean, Your Honor. I'm sorry.

15 THE COURT: Are you making -- you've
16 alleged or saying that you are a holder in possession
17 under 36-33-01?

18 MS. WOOTEN: Yes, Your Honor.

19 THE COURT: The second statutory
20 language is in 302 which is the holder in due course
21 language. And a holder in due course has to -- has to
22 have received the -- there are a number of elements --
23 but one of the elements is that you would've had to pay
24 value for the instrument. So if you're not trying to
25 prove that you're a holder in due course, that you're

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1 merely a holder with the right to enforce, it's not an
2 issue.

3 MS. WOOTEN: You're correct, Your Honor.
4 We are not claiming under that statute.

5 THE COURT: Okay. Really the only thing
6 the holder in due course statute, as I understand it,
7 would afford you is that others in the chain of
8 ownership of this particular obligation that you're
9 not -- you accept all of the frailties of the note as
10 it's come down to you.

11 MS. WOOTEN: Yes, Your Honor.

12 THE COURT: In other words, you can't
13 block a prior defect in the note or the instrument by
14 virtue of the fact that you're a holder in due course.
15 I don't think it's an issue in this case.

16 MS. WOOTEN: I don't either.

17 THE COURT: But anyway, so that's the
18 only reason the consideration would be important,
19 Mr. Sloan. They are saying that they are relying on
20 301 not 302 in their argument. So I don't have a
21 problem with that.

22 MR. SLOAN: Yes, sir.

23 THE COURT: All right.

24 MS. WOOTEN: Thank you, Your Honor.

25 THE COURT: Let me see what you've got.

1 MS. WOOTEN: Oh, this is our chart, Your
2 Honor. Do you want to mark it?

3 THE COURT: Yeah. Let's mark it as an
4 exhibit to your motion.

5 MS. WOOTEN: Sure.

6 COURT REPORTER: Marking this as 1?

7 MS. WOOTEN: Exhibit 1.

8 THE COURT: No, no. It's not Exhibit 1.
9 You've already pre-filed some exhibits. So let's make
10 sure it's the right exhibit. And I think you had --

11 MS. WOOTEN: We had A through D, Your
12 Honor.

13 THE COURT: You had A, B, C, D. There
14 are actually Exhibits 1, 2, 3, 4, and 5 attached to the
15 motion for summary judgment. So this will be Exhibit
16 No. 6.

17 MS. WOOTEN: All right.

18 THE COURT: Entered without objection
19 from the defendant.

20 MS. WOOTEN: Thank you, Your Honor.

21 (Plaintiff's Exhibit No. 6 was received
22 into evidence.)

23 MS. WOOTEN: Thank you, Your Honor.

24 That's all we want at this time. We would just reserve
25 the right to respond.

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1 THE COURT: Absolutely, sure. All
2 right. It's the defendants turn. Bill, are you gonna
3 let Mr. Barnes argue the reply?

4 MR. SLOAN: Yes, sir.

5 THE COURT: Okay. Mr. Barnes, I
6 recognize you now. Please go ahead.

7 MR. BARNES: Thank you, Your Honor. And
8 I'm assuming the Court has read our response.

9 THE COURT: Timeout one second. Kim,
10 would you like to watch Mr. Barnes? You can sit in the
11 witness seat over here and observe.

12 MR. SLOAN: Hear better.

13 THE COURT: You'll be able to hear him
14 better, too.

15 MS. WOOTEN: That would be really
16 helpful, Your Honor.

17 THE COURT: Bill if you want to come
18 over, you can sit in the other witness chair.

19 MR. SLOAN: Sounds good to me, Your
20 Honor.

21 (Brief pause.)

22 THE COURT: So, Mr. Barnes, you were
23 saying that were sure that the Court had read your
24 memorandum. And, indeed, I have read the memorandum in
25 response to motion for summary judgment. So you're

1 correct.

2 MR. BARNES: Thank you, Your Honor.

3 Just a couple of preliminary matters based upon some
4 assertions that Ms. Wooten or Mrs. Wooten -- I don't
5 know which one it is -- made to report in her opening
6 presentation. As Your Honor knows, the reason why this
7 case is still alive after all these years is because as
8 the Court recognized at a prior hearing, every time we
9 got to a point where the Court wanted to set a prior
10 hearing, a prior final hearing, the plaintiff would
11 sell the note, sell the loan to somebody else, and we
12 have a substitution. I lost count of the number of
13 plaintiff's in this case. I think it's eight or nine
14 from the beginning. There have been at least 13 or 14
15 different entities which claim to have touched or had
16 an interest in this loan. So that's the reason why
17 this has dragged on so long. It's not the fault of
18 Mr. Singleton's. Mr. Singleton has responded to all
19 the discovery from the various plaintiffs that's filed
20 a motion for summary judgment, as Ms. Wooten stated, to
21 the Court. Mr. Singleton has not dragged this case
22 out. It's set solely as a result of the actions of the
23 plaintiff.

24 Ms. Wooten made an allegation that I was
25 physically present in Florida to examine the original

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1 note. That is not accurate. I was not there.
2 Mr. Singleton was there, I was not. I was in
3 Los Angeles at the time as I am now. Now, the reason
4 -- well, before I get into the other problems with
5 Ms. Wooten's argument is, Judge, one of the things that
6 Ms. Wooten has ignored is the various standards on
7 summary judgment in South Carolina, one of which is
8 not common to a lot of states. Of course, the general
9 standard is pretty common. The moving party must
10 demonstrate the absence of any genuine issue of
11 material fact, and it's incumbent upon that party to
12 demonstrate that. But South Carolina has this mere
13 scintilla of evidence standard in civil cases. And
14 Ms. Wooten didn't address that because that's what the
15 law is. The law not only favors having all of the
16 evidence and inferences being viewed in the light most
17 favorable to the non-moving party, but the Supreme
18 Court of South Carolina has held in the Hancock
19 versus Mid-S Management Company case, "Accordingly, we
20 hold that in cases applying the preponderance of the
21 evidence burden of proof," which this is because it's a
22 civil case, "the non-moving party is only required to
23 submit mere scintilla of evidence in order to withstand
24 a motion for summary judgment." And that's because
25 summary judgment in South Carolina, like certain other

1 states, is a drastic and disfavored remedy.

2 Now, here, that becomes important
3 because it is the plaintiff itself through the
4 deposition testimony of its various representatives,
5 through the documents that the plaintiff has provided
6 that demonstrate a plethora, myriad genuine issues of
7 material fact including issues of material fact
8 involving the credibility of the plaintiff's own
9 witnesses as to whether or not, A, this really is an
10 original note and, B, whether or not there was any
11 significant -- legally sufficient transfer of the
12 interest in the note and the mortgage to now the eighth
13 or ninth or whatever plaintiff it is. Summary judgment
14 can't be granted when there is conflicting evidence.
15 We've cited the case law for that effect. And when
16 there is conflicting evidence on some material issue,
17 the Court may not grant summary judgment.

18 Now, some of these -- I'm just gonna
19 highlight a few of these at this point because it
20 relates directly to the standard, this particular
21 standard. Number one, whether the note remains lost
22 and thus whether the claimed original note is in fact
23 an original. Mr. Singleton never ever testified that
24 this claimed original note that he was presented with
25 in Florida is in fact an original. He was not sure

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1 about that. So any argument that he admitted that it
2 was, is not accurate as set forth by the testimony
3 itself. The other issue is whether the enforceable
4 interest in the note and mortgage were ever legally
5 transferred to the current or any prior plaintiff given
6 the evidentiary gaps and unanswered questions as to the
7 transfers, which I'm gonna go into in a minute. The
8 conflicting evidence provided by the plaintiff itself
9 including as to whether GMAC, the first alleged
10 transferee, ever had an interest in the loan given the
11 fact the plaintiff's representative James George, who
12 was many, many plaintiffs ago, admitted under oath that
13 there was no interest in the note and mortgage ever
14 transferred to GMAC notwithstanding the plaintiff's
15 production of a July 14, 2008, MERS assignment of
16 mortgage which claim to have transferred both the note
17 and mortgage to GMAC.

18 So right up front we have these issues
19 where, as Your Honor recalls, we have the original
20 lender who went bankrupt; we have a transfer some 13 or
21 14 months after the original lender filed bankruptcy by
22 MERS to GMAC, alleged. And as Your Honor recalls, we
23 took the deposition testimony of MERS senior counsel.
24 Per MERS itself, admitted under oath in his deposition,
25 that MERS does not act on the behalf of non-functional

1 entities. Well, at the time the July 14, 2008, MERS
2 assignment was executed, the original lender People's
3 Choice was a non-functional entity. It didn't exist.
4 They filed for bankruptcy. So inaedificatio (ph) right
5 up front, you've got this alleged original
6 transfer deemed flawed and not able to happen. And I'm
7 gonna get into why that's important later. Not able to
8 happen as a matter of fact and as a matter of law.

9 Now, let me -- I want to go through some
10 of these admissions that Ms. Wooten wants the Court to
11 ignore. Number one, the whole issue of the original
12 lender filing bankruptcy. And she has not taken issue
13 with this. We allege that they have conceded,
14 C-O-N-C-E-D-E-D, that the original lender did in fact
15 file bankruptcy. I meant not conceited as in the
16 personality trait. Now, one of the prior plaintiffs in
17 this case, one of them, was this entity called
18 Wilmington Savings Fund Society FSB, deviate Christiana
19 Trust not in its individual capacity but solely in its
20 capacity as certificate trustee for NNPL Trust Series
21 2012-1, which was not the original lender, did not
22 extend any credit to Mr. Singleton. And there had been
23 multiple substitutions of the plaintiff based on that.
24 In as -- I'm sorry -- including this Wilmington entity.

25 Now, as I just said, we went through the

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1 deposition testimony of MERS counsel who said --
2 basically testified that that MERS assignment isn't
3 worth the paper it's printed on because it couldn't
4 have happened. MERS doesn't do that sort of thing for
5 non-functional entities. Now, we took the deposition
6 in 2013 of Mr. George, Mr. James George, who was the
7 representative -- designated representative of one of
8 the prior plaintiffs, and we've cited his deposition
9 testimony, chapter and verse. And that deposition was
10 previously filed. Mr. George testified that he never
11 saw any order from the bankruptcy court having
12 jurisdiction over the People's Choice bankruptcy which
13 permitted the assignment of Mr. Singleton's loan out of
14 that bankruptcy state. Well, that's important because
15 if in fact, as Your Honor knows, when an entity files
16 bankruptcy, all the assets of that entity come under
17 the jurisdiction and control of the bankruptcy trustee.
18 And the only way you can divest an asset from that
19 estate is by motion, which has to be presented to the
20 creditors for an opportunity to object, and then there
21 has to be a court order from the bankruptcy court
22 allowing that divestiture to occur. That did not
23 happen here. As a matter of fact, the plaintiff has
24 never taken issue with the scenario that the Singleton
25 loan was a retained asset of the People's Choice

1 bankruptcy when it filed bankruptcy, other than this
2 MERS assignment, which MERS own counsel said couldn't
3 happen. So we have a disconnect right there.

4 Now, Mr. George said -- files an amended
5 affidavit on July 31st of 2014, well after his
6 deposition, where he says under oath at no time did
7 GMAC own the subject loan. Well, that's in direct
8 contradiction to the July 14, 2008, MERS assignment,
9 which was produced by the plaintiff, which the
10 assignment claims that MERS assigned a note from
11 People's Choice to GMAC. So is the assignment correct?
12 Is Mr. George correct? We don't know. But what we
13 have is a bunch of unanswered questions.

14 Now, then we take the deposition of the
15 next representative is Michael Dolan. And the
16 admissions that he made are set forth in our response.
17 Mr. Dolan testified that he had never seen the
18 original note and mortgage. And he also testified he
19 has no knowledge of whether this Singleton loan was
20 transferred to the trustee was done in compliance with
21 the sale and administration agreement upon which that
22 plaintiff was relying at that time. He has no
23 knowledge of when any transfers took place, what
24 consideration was paid, or how it was affected. And he
25 also admitted that the endorsements and allonges are

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1 not dated, and thus the assignment is used as the date
2 of transfer. Why is that important? Because again
3 harkening back to the July 14, 2008, MERS transfer, if
4 that's the date they're claiming it was transferred,
5 that pursuant to MERS own counsel, could not have
6 happened.

7 What happens next? The plaintiff now
8 produces a third representative, this Steven Bellanti
9 individual who we deposed twice, once before the most
10 recent substitution and one after. We filed those
11 depositions as well, and set forth the relevant
12 admissions in our response beginning at Paragraph 20.
13 Mr. Bellanti testified that he could not provide
14 information as to the facts and circumstances related
15 to each and every assignment as requested on the
16 deposition notice. He was employed by the servicer at
17 the time which was the Wilmington entity, the one I
18 said a few minutes ago. And admitted that the
19 Wilmington entity was not the plaintiff in this case.
20 And he testified that Wilmington Savings Fund Society
21 is the owner of the loan and not the plaintiff at the
22 time which was U.S. Bank as Trustee for Securitization
23 Trust. So back in 2021 the then current plaintiff, or
24 was claimed to be a plaintiff, this U.S. Bank entity,
25 their own corporate representative claims that they're

1 not the plaintiff. They don't have an interest in the
2 loan. And he has no idea what the relationship between
3 the Wilmington entity and U.S. Bank.

4 Now we get to the loss note information.
5 Mr. Bellanti testified that the original note affidavit
6 and the three unrecorded assignments were sent from
7 Waterfall Asset Management which provides otherwise
8 unidentified assistance to the investor, to this
9 McMichael Taylor Gray Law Firm. And I think the
10 gentleman in the back is from that law firm per the
11 bailee letter. Now, Waterfall Asset Management, if the
12 unrecorded assignments and the lost note affidavit are
13 being transferred Waterfall Asset Management, that's
14 telling us that there's an issue as to whether or not
15 Waterfall Asset Management ever owned the Singleton
16 loan, and the question that remains unanswered.

17 The three unrecorded assignments were
18 from this entity styled FRT -- capital Frank Roger
19 Thomas -- 2011-1 Trust to another FRT Trust that's
20 2013-1 Investor, LLC. Then from that trust to 2013
21 trust to the Wilmington entity. And then all of a
22 sudden, out of the blue, there's this third unrecorded
23 assignment from somebody called Cascade Funding
24 Mortgage Trust 2017-1 to U.S. Bank Trust as trustee for
25 this Cascade Mortgage Funding Trust. What we have is a

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1 gap. There is no assignment from the Wilmington
2 entity, which was Wilmington Savings Fund Society,
3 deviate Christianity Trust, not in its individual
4 capacity but solely in its capacity as certificate
5 trustee for NNPL Series 2012-1 to Cascade. There's
6 this jump. There's this quantum leap from this second
7 assignment, the unrecorded assignment, from the
8 second FRT entity to Wilmington. And then all of a
9 sudden this Cascade entity appears out of no where and
10 claims to have an assignable interest in the note and
11 the mortgage. So how did that happen? And that also
12 breaks the chain of assignments and transfers.

13 Now, Mr. Bellanti also testified to
14 this -- as part of the plaintiff's response to our
15 outstanding discovery request. But there was this
16 mortgage loan purchase agreement between NNPL -- Nancy,
17 Nancy, Peter, Larry -- Trust Series 2012-1 as the
18 seller, Nomura, N-O-M-U-R-A Corporate Funding, LLC, as
19 the seller responsible party and the current plaintiff,
20 Waterfall Victoria Grantor Trust II, Series G, as
21 purchaser, and Waterfall Victoria Master Fund, LLC, as
22 purchaser responsible party. Well, what do those terms
23 mean? What is a purchaser responsible party? What
24 authority do they have to affect this purchase of this
25 loan from this Nomura entity? We don't know. So we

1 don't even know if that sale allegedly took place, or
2 how it took place, or under what circumstances it took
3 place, and who had the authority to make the purchase.
4 Now Mr. Bellanti gets into the lost note affidavit.

5 The lost note affidavit was on behalf of
6 an entity called the Company with a capital C. And the
7 Company has identified in this lost note affidavit,
8 which was executed under oath and subject to the
9 penalties of perjury, the Company identified which was
10 NNPL Trust Series 2012-1. That lost note affidavit was
11 executed on January 29th of 2018, which was before the
12 current plaintiff came in, ended this case as admitted
13 to by the plaintiff. Paragraph 3 of that affidavit
14 under oath states that the Company, this NNPL Trust
15 Series, previously originated or purchased the note
16 "identified below by virtue of the lost note affidavit
17 attached hereto as Exhibit A." So there are two things
18 going on here. Number one, this NNPL Trust Series is
19 claiming that it originated or purchased the note in
20 the conditional. Identified by virtue of another lost
21 note affidavit, referred to in this lost note
22 affidavit, Mr. Bellanti said under oath and agreed that
23 the originator was People's Choice Home Loan, the one
24 that filed bankruptcy. Well, so we know that Paragraph
25 3 of the lost note affidavit, which is in the

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1 conditional, that demonstrates that NNPL did not
2 originate the loan. So the question becomes did they
3 purchase it?

4 Now, he agreed that the note states that
5 the originating bank was People's Choice and not NNPL.
6 And then he admits that the second lost note affidavit
7 that's referred to in this January 19, 2018, lost note
8 affidavit, they don't have this second affidavit. They
9 only have this one. They only have the one that he's
10 testified to. But there is no other lost note
11 affidavit. So now we have a sworn deposition testimony
12 and a sworn affidavit under oath that refers to another
13 lost note affidavit. So what does that other lost note
14 affidavit say? We don't know. Because the plaintiff
15 has not produced it. Mr. Bellanti didn't have it. It
16 wasn't in Statebridge's records. He works for the
17 Statebridge, the servicer at the time. So what does
18 that say? Does that say the note still remains lost,
19 that they can't find it? Was it executed by some other
20 entity? We don't know. Which is a very, very big
21 issue in this case.

22 Mr. Bellanti also admitted that there
23 was absolutely nothing in his file that states that the
24 note, which was lost as of January 29th of 2018, was
25 ever found. And there is nothing in the servicer's

1 files that reflects that it was ever found. Now,
2 common sense, logic, and the burden of proof and the
3 evidence would if say we were to accept Ms. Wooten's
4 position that all of sudden this original note which
5 was sworn to under oath to be lost was magically found,
6 there would be something in the collateral file of the
7 servicer that says, hey, guess what, we found the note.
8 Here's where we found it. This is where it was. This
9 is the original. Please put this in the collateral
10 file to reflect in the servicer's records that the lost
11 note has been found. That did not happen. That has
12 not happened. Mr. Bellanti admitted there's nothing
13 that shows who the owner of the note was when it was
14 lost.

15 Now, Mr. Bellanti has no knowledge of
16 persons whose names appear on this February 4, 2020,
17 assignment, which is the most recent one, which the
18 current plaintiff appears to be relying on. So now we
19 have this other gap here because all of a sudden
20 between the time the note was lost and between the time
21 that current plaintiff came into the case, allegedly
22 this lost note was found. Mr. Singleton was not sure
23 whether or not what he was shown was an original or
24 not. And he even said it was on different paper. So
25 did they manufacture an alleged original note to try to

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1 cover themselves? Again, we don't know. Mr. Bellanti
2 admitted -- and this is all just from his first
3 deposition. We haven't even gotten to the second
4 deposition yet. Mr. Bellanti admitted that
5 the allonged chain does not state that the note was
6 physically transferred. Well, that's probably
7 accurate because you can't transfer something you don't
8 have. The note is lost, you can't transfer something
9 that's lost. And he admitted that on page 64, lines 6
10 and 10. It is physically impossible to transfer a lost
11 note.

12 So how do you become a holder of
13 something that's lost and that was never found? The
14 plaintiff offers no explanation for that whatsoever.
15 So then we deposed Mr. Bellanti again on August 22 of
16 this year. Now he says he was not sure if there was a
17 purchase and sell agreement by which Mr. Singleton's
18 loan was identified as being purchased by the current
19 plaintiff from the prior plaintiff. And he's also not
20 sure if there are receipts or bailee letters evidencing
21 any such purchase. So not withstanding that the amount
22 of consideration may not be an issue, because the
23 plaintiff apparently isn't banding any request to
24 travel down a holder in due course path, there's no
25 evidence of a purchase at all. And their own

1 representative admits to that. He has no personal
2 knowledge if U.S. Bank paid any consideration for
3 the Singleton loan or whether it was sold as individual
4 loan or part of a pool or group or portfolio. That
5 relates directly to how it was sold or transferred.
6 Was it an individual loan purchase? Was it a pool
7 purchase? Was it a portfolio purchase? We don't know.
8 Therefore, we don't know if it was purchased by this
9 current plaintiff at all. And Mr. Bellanti testified
10 that other than this February 3, 2020, assignment of
11 mortgage, he has not seen any documents regarding the
12 conveyance of the Singleton note and mortgage from the
13 Wilmington entity as the prior plaintiff to the U.S.
14 Bank entity which was then the current plaintiff. And
15 real important, he admitted that there's no endorsement
16 stamp on the page of the note where these
17 endorsement stamps appear, page 4 of 4. So they're
18 confined to the allonges.

19 What does he admit to next? He admits
20 that he did not know if any of the five allonges to the
21 note were within Statebridge's collateral file. Now, a
22 collateral file is previously testified to by the
23 plaintiff's representatives contains very certain
24 specific things. It's a term of what? A collateral
25 file contains what's claimed to be the original note,

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1 the original mortgage, and any assignments,
2 endorsements, allonges and that sort of thing. Their
3 own representative said, well, none of that is in my
4 file. We don't have any of that. So he next admits
5 that the plaintiff was the one that provided the lost
6 note affidavit as part of his response to
7 Mr. Singleton's discovery.

8 Now, Mr. Bellanti reverses himself. In
9 his previous deposition in 2020 he says, yep, here's a
10 lost note affidavit. Says the note was lost. We have
11 no record of it being found. We have nothing in the
12 file that says it was found. Now, in 2022, he switches
13 gears and he says it's the plaintiff's position now,
14 this plaintiff, that the lost note affidavit is false,
15 and that it is the plaintiff's contention that the LNA,
16 which was signed under penalty of perjury, is in fact a
17 false affidavit. How do you grant summary judgment
18 when the plaintiff's own representative testifies,
19 first, that pursuant to an affidavit in their file
20 under oath, the note is lost but then reverses itself
21 and says in 2022, no, that's a false affidavit. In
22 other words, that's perjury. How do you grant summary
23 judgment when there's evidence of perjury as to whether
24 or not this note is lost or not? I've never seen that
25 in 35 years of practice or across any of the states

1 I've ever practiced in.

2 And when we're talking about the
3 scintilla of evidence standard, we're not talking about
4 this case changing course as Ms. Wooten said from a
5 flat playing --- we're now talking about peaks, valleys,
6 hills, and mountains in light of this sworn testimony,
7 which the court can't ignore. Because on summary
8 judgment, the entire record has to be considered. I
9 know Ms. Wooten wants to ignore this testimony and says
10 it's irrelevant, but it's not relevant. How can you
11 hold something that there is evidence of was lost,
12 doesn't exist, and there's no -- absence of genuine
13 issue of material fact as to whether or not this note
14 remains lost to this day because we have a second lost
15 note affidavit that nobody can seem to find. Which the
16 first lost note affidavit, said under oath, was
17 attached to that affidavit.

18 And going back to the lost note
19 affidavit. Now Mr. Bellanti says he doesn't know that
20 the Company, which is identified in the lost note
21 affidavit as the NNPL Trust Series 2012-1, purchased
22 the Singleton loan. He has no idea. Now, there's a
23 sentence in lost note affidavit that says, and I quote,
24 "By virtue of the lost note affidavit, attached hereto
25 as Exhibit A, differs to a lost note affidavit."

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1 Again, he has not seen that. He testified that the
2 current plaintiff did not acquire the original note
3 from NNPL Trust Series. Well, this purchase agreement
4 claims that it did. Their own representative admits
5 under oath that they did not. There is a Paragraph 5
6 in the lost note affidavit that says The Company --
7 again, it's the NNPL Trust Series -- is and aware that
8 Victoria -- I'm sorry -- Waterfall Grantor Victoria
9 Trust II, Series G -- as in George, which is the
10 current plaintiff, and/or it's transferees and assigns,
11 rely upon the statements made herein as to such note
12 having been lost, miss -- misfiled or destroyed and
13 never having been, among other things, assigned or
14 transferred. That's what they're saying under oath,
15 and that this plaintiff is relying on that.

16 Well, again, Ms. Wooten claims that, you
17 know, they hold the note to this day, and it has not
18 been lost. Their own represented testifying to their
19 own documents says that this plaintiff is relying on
20 the statement as to the note being lost, and it was
21 never signed and never transferred. We have enough
22 transfers and documents to fill up a small file box
23 here. So, again, at a very minimum, this individual
24 that signed this lost note affidavit would have to be
25 deposed to figure out whether or not Mr. Bellanti was

1 telling the truth, whether he was telling the truth. I
2 mean, statements about reliance -- which again are
3 questions of fact that aren't resolved on summary
4 judgment -- you know, were in fact relied on or not.

5 And although the lost note affidavit was
6 executed on January 29th of 2018, the Waterfall grantor
7 plaintiff, which is now in the case, had not been
8 substituted into the case at that point, which is
9 raises an interesting question. If the lost note
10 affidavit, which was signed in late January of 2018,
11 says that this plaintiff now is relying on the
12 statements of the lost note affidavit saying the note
13 was lost and that the note was never assigned or
14 transferred. If they're relying on that at that time,
15 how do they later claim to come into this case as the
16 alleged holder of this note which is lost? Which
17 statements are they relying on in the lost note
18 affidavit? How does that happen? Ms. Wooten hasn't
19 explained that either. And, again, Mr. Bellanti
20 reconfirmed that there's nothing in the collateral file
21 ever -- that he saw -- ever -- governing the first
22 alleged transfer of the Singleton note from bankrupt
23 lender to GMAC. Although, he later admits that
24 pursuant to the allonge from July of 2014, signed in
25 the presence of GMAC. Well, it appears that he did.

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1 He did have an interest. Well, did he or didn't he?
2 We don't know. It's directly contradictory testimony
3 between Mr. Bellanti and Mr. George, the prior
4 plaintiff's representative. He does not know --
5 Mr. Bellanti doesn't know who GMAC allegedly purchase
6 an interest from.

7 Now, there is a series of undated
8 allonges that we next reviewed in his deposition which
9 state -- the first one being signed in the presence of
10 GMAC. And it refers to an assignment of a note and
11 mortgage of -- date here from Jamie Singleton in favor
12 of GMAC mortgage. Well, Mr. Singleton didn't sign a
13 note and mortgage with GMAC, nor did he sign an
14 assignment of mortgage to GMAC. And the second
15 allonge, which is signed in the presence of his 50 by
16 50 REO -- Roger, Edward, Oscar -- LLC, refers to an
17 assignment of mortgage of an even date from Jamie
18 Singleton in favor of 50 by 50 REO. Well, again,
19 Mr. Singleton didn't sign a note and mortgage in favor
20 of 50 by 50 REO. He never did, a note or a mortgage.

21 Now, there was another claim transfer to
22 an entity known as WestVue, W-E-S-T-V-U-E, NPL --
23 Nancy, Peter, Larry -- Trust II. Mr. Bellanti
24 testified under oath he did not know if the Wilmington
25 entity was the prior plaintiff before U.S. Bank, how

1 the Wilmington entity transferred the note to the
2 WestVue entity as if U.S. Bank as trustee for the
3 present plaintiff was a successor in interest to
4 Wilmington entity. In other words, the present
5 plaintiff is claiming is the successor in interest to
6 the Wilmington entity. But the problem with that is
7 that there is a transfer from the Wilmington entity to
8 the WestVue entity. Well, if that's the case, where is
9 the documentation transferring the loan from the
10 WestVue entity to present plaintiff? It's not there.
11 And I asked him about that. And he admitted that one
12 of the allonges states that the note was transferred
13 from the Wilmington entity to the WestVue entity, but
14 he doesn't know how that happened. And he also
15 admitted that there is no schedule of mortgage loans
16 attached to that mortgage loan purchase group agreement
17 that we just talked about a few minutes ago. He
18 admitted that the substitution of the
19 Waterfall Victoria Trust for the Wilmington entity was
20 not requested and the assignment of mortgage not done
21 until February 3, 2020. Well, probably because the
22 note under the lost note affidavit from January of 2018
23 was lost. There's a bailee letter, which is Exhibit 13
24 to his deposition from Seneca, S-E-N-E-C-A,
25 Mortgage Servicing regarding this loan. Mr. Bellanti

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1 has know idea of what Seneca's relationship is. The
2 bailee letter states that there are original allonges,
3 but they don't say which ones. And they don't identify
4 the allonge to anyone -- from anyone to GMAC.

5 Then we have the April 30, 2018, letter
6 which is about almost three months after the lost note
7 affidavit was signed from this Crawford and Keller Law
8 Firm to Stern and Eisenberg Southern Law Firm, which
9 was marked as Exhibit 14, "Please find enclosed the
10 original note, mortgage, and CD," with the letter being
11 dated after the lost note affidavit. Well, how do you
12 send the original note and mortgage when three months
13 earlier the lost note affidavit says under oath it was
14 lost. Again, nobody seems to have an explanation for
15 that. The bailee letter also states that another
16 entity, Situs, S-I-T-U-S, AMC, "Has been engaged for
17 bailee oversight on behalf of Waterfall Asset
18 Management, LLC, the owner of the above referenced
19 loan." Well, if Waterfall Asset Management, LLC, is
20 the owner of the loan, how could the Wilmington entity
21 transfer it through the present plaintiff? How can you
22 transfer something you don't own? You can't. And
23 nobody offers an explanation for this.

24 Mr. Bellanti is not sure if the
25 statement in that letter is true or not. So, you know,

1 were they the owner? Were they not the owner? If they
2 were the owner, did they ever release it to transfer --
3 to allow the transfer to be made to the present
4 plaintiff? We don't know. Exhibit 16 was a release to
5 asset file which requested a lease of the asset files
6 for the Singleton loan held by you as custodian on
7 behalf of the buyer. The custodian is identified as
8 Wells Fargo Bank, and the buyer is identified as yet
9 another entity Credit Suisse First Boston Mortgage
10 Capital, LLC. So now we have yet another buyer of the
11 Singleton loan, alleged, Credit Suisse First Boston,
12 LLC. By virtue of that very document produced by the
13 plaintiff. And, of course, Mr. Bellanti has no idea
14 of the relationship between those parties.
15 Mr. Singleton's deposition testimony relative in part
16 is set forth on paragraphs 81 and 82 of my response,
17 which we've already discussed.

18 What is the bottom line of all this,
19 Judge? The bottom line of all this is, for lack of a
20 better word, this case is a law school exam. How many
21 genuine issues of material fact can you identify which
22 would defeat summary judgment especially given --
23 excuse me -- the mere scintilla standard in
24 South Carolina? We have conflicting deposition
25 testimony and affidavit testimony from the plaintiff's

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1 own witnesses. You have the plaintiffs own designated
2 representative testifying to sworn affidavits in their
3 file, at least one sworn affidavit that says the note
4 was lost and nothing to show that it was found. We
5 have this note being lost since January of 2018, and
6 not documentation as to how or when it was ever found.
7 We have this note magically appearing out of nowhere
8 after years and years of litigation with no explanation
9 as to how that happened. So all of this, Judge, is --
10 what this tells us is the plaintiff is resting on
11 speculation and unproven assumptions while
12 simultaneously asking the Court to ignore all of this
13 evidence that militates very, very heavily and
14 incredibly heavily against summary judgment. You know,
15 there's just too much here.

16 The sworn testimony of the plaintiff's
17 own representatives show that the current plaintiff or
18 any of the plaintiffs before ever acquired a lawful
19 interest in Singleton loan. And why is that important?
20 Because if the original transfer from the bankrupt's
21 original lender, who GMAC alleged never happened, then
22 GMAC had nothing to transfer to the next one in the
23 chain, which were the two FTR entities. Which means
24 they had nothing to transfer to any of these
25 other entities, whether it be the Waterfall Asset

1 entity or WestVue Trust entity or the U.S. Bank entity
2 or the Waterfall entity or Credit Suisse or -- this
3 thing, this loan never went anywhere as far as anybody
4 knows with any substantial competent evidence. And I
5 use that for a reason. Because, again, the plaintiff's
6 burden is to show that there is the absence of
7 genuine -- any genuine issue of material fact. And how
8 do you do that? You have to have substantial competent
9 evidence. They don't. All the evidence they produced,
10 which is evidence, affidavits and sworn deposition
11 testimony are evidence, show that there is no way in
12 the world that summary judgment would be proper in this
13 case. All these issues have to go to trial, and this
14 has to be presented to the Court in the context of a
15 trial.

16 It's our position, among other things,
17 that because there was never an original transfer to
18 begin with that no transfer could have occurred. And
19 this is not an attack on an assignment. There's a
20 difference. There's a legal difference between an
21 attack on an assignment and not have anything to
22 assigned as a matter-of-fact. And I go into this law
23 beginning of page 21 of our response. South Carolina
24 hasn't addressed this distinction yes, but other courts
25 have. But it's a distinction based on fact. If in

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1 fact you don't have anything -- if I don't have this
2 little bottle of water here in my hand but claim to
3 give it to somebody, couldn't have happened. Because
4 why? I don't have it. I don't have anything to
5 transfer. So whether I come out with a similar looking
6 bottle, at some point in time, whether I claim this was
7 the same bottle, all those are issues of fact because I
8 have affidavits in my file that said this bottle was
9 lost. This bottle disappeared, and nobody has ever
10 testified that this bottle did not disappear or is
11 ultimately found. And I know Your Honor has read this,
12 so I'm not gonna go through that again. That argument
13 is -- begins on page 24 -- 21 of our response.

14 Now, South Carolina law all has this
15 interesting body of case law that says you cannot
16 acquire a right from your own unlawful act. Well,
17 let's see here, what do we have? We have a
18 plaintiff whose own representative says in last year's
19 deposition, oh, yeah, the note was lost and we don't
20 have anything to show us now. Now, in 2022, in August,
21 he changes his tune and he says, oh, no, that's a false
22 affidavit under oath. So did the plaintiff acquire
23 this right in the Singleton loan by false pretenses?
24 Are they saying that they acquired something that
25 doesn't exist? Are they saying that they acquired a

1 note that was lost but that that lost note affidavit,
2 which they never, ever until Mr. Bellanti took issue
3 with it, ever said was lost. That lost note affidavit
4 has been around for the last couple of years, Judge,
5 and we raised it in a prior motion. They never ever
6 until Mr. Bellanti says, well, we're not relying on
7 it, said it was false. So right there you have
8 evidence produced by the plaintiff as to whether or not
9 this alleged original note is an original or not. And
10 again, nobody has testified to that under the summary
11 judgment standard.

12 So the bottom line, Judge, is that the
13 plaintiff has failed to prove the existence of a debt
14 owed to this plaintiff. And that's important. Because
15 the Bell case, which is the South Carolina Court of
16 Appeals in 2009, if you don't prove the existence of a
17 debt owed to the plaintiff or plaintiff's principal,
18 then you don't win. You don't get to prevail. And
19 they haven't, Judge. And I know Ms. Wooten's response
20 to all this is that, well, all of this is irrelevant,
21 all of this irrelevant because we have this piece of
22 paper which we claim to be an original note. Well, I
23 respectfully disagree and say sorry, Ms. Wooten. By
24 virtue of your own evidence and your own
25 representative's testimony, there are a multitude of

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1 material issues as to that. And summary judgment on
2 that issue would be absolutely improper.

3 We go onto the questions of MERS agency
4 to make the original transfer, which I'm not gonna
5 reiterate. Now, Ms. Wooten -- I'm gonna finish up with
6 Ms. Wooten's argument that they don't have to disprove,
7 you know, affirmative defenses. Well, she didn't
8 distinguish the Engleret case, if I'm saying that
9 right, which is the South Carolina Supreme Court
10 case from 2008, stated on page 25 of our response. And
11 what that response did was it considered the
12 affidavits, a counterclaim, which we have here, and the
13 affirmative defenses that were sufficient to create
14 genuine issues of material fact as to whether or not --
15 in that case, Engleret -- properly terminated the
16 contract and reverse the grant of summary judgment.
17 Well, it's the same situation here. In light of all
18 these affirmative defenses, there are genuine issues of
19 material fact as to whether not this plaintiff, this
20 plaintiff now, ever acquired an interest in this loan
21 given these multitude of transfers, the gaps in the
22 transfers, and this intervening transfer between the
23 U.S. Bank entity and this plaintiff which is documented
24 by an assignment but yet their own plaintiff's
25 representative says, well, I have no idea where that

1 came from because I don't know who this WestVue entity
2 is.

3 So in our conclusion, Judge, like we've
4 said, there are 18 issues of fact right up front. Did
5 GMAC ever own the loan? Did 50 by 50 ever own the
6 loan? Did any FRT entities ever own the loan? Did
7 NNPL Trust Series, which is the company that lost their
8 affidavit, ever own it? Did the Wilmington entity ever
9 own it? Dick Cascade Mortgage Funding trust ever own
10 it? Did the Nomura Corporate Funding America, LLC,
11 ever own it? Did Waterfall Victoria Master Fund ever
12 own it? Did the WestVue entity ever own it? Does
13 Wells Fargo have an interest? Did Credit Suisse ever
14 own it?

15 There are just so many issues in this
16 case, Judge, that if there was a textbook case for the
17 denial of summary judgment, in my humble opinion, this
18 is it. This is beyond a textbook case. This has 15
19 chapters of why summary judgment should not be granted.

20 So in light of all that, Judge -- and I know I've been
21 a little bit long-winded, but I think it's important to
22 highlight all of this in light of Ms. Wooten's
23 nonrecognition of all these matters that are of record
24 and the admissions of her own client's representatives
25 and their own testimony -- that it be put on the record

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1 and it be brought to light, and would respectfully
2 request, Judge, that this motion for summary judgment
3 be denied, that we set this case for trial. We set it
4 for an entire day. We bring in all these witnesses,
5 and find out who's telling the truth and who isn't.
6 And we see if in fact this plaintiff has anything, any
7 interest to enforce. I thank the Court for its time.
8 Again, I apologize for being long-winded, but I'm
9 trying to diligently represent my client.

10 THE COURT: Thank you very much,
11 Mr. Barnes. I appreciate that. Ms. Wooten, do you
12 have a response?

13 MS. WOOTEN: I do, Your Honor. I'd like
14 to address.

15 THE COURT: Hold on one second. Can you
16 hear her, Heather?

17 (Court reporter affirms.)

18 THE COURT: Go ahead, Ms. Wooten.

19 MS. WOOTEN: Can you hear me?

20 MR. BARNES: Perfectly.

21 MS. WOOTEN: Can you see me?

22 MR. BARNES: No.

23 MS. WOOTEN: That's all right.

24 THE COURT: I can let you look at him.

25 MR. BARNES: We've seen each other

1 before, so . . .

2 THE COURT: Go ahead.

3 MS. WOOTEN: All right. First of all,
4 Your Honor, in response, Mr. Barnes said that we
5 haven't recognized the evidence that he's put in. We
6 recognize it. It's just that it only matters if you
7 got a history of the case. The reason that it doesn't
8 matter to us is because there's been no summary
9 judgment evidence produced by the defendant that shows
10 issues we are not the proper holder of the mortgage and
11 the note. That's what they would have to show in our
12 opinion and in our position to overcome summary
13 judgment in this case. None of the evidence -- I think
14 this is one more attempt -- and this is what happened
15 from the beginning of this case, throw enough stuff out
16 and hope some of it sticks. Because the evidence that
17 they put it only matters in the context of whether
18 there's ownership cause here, and that's not what our
19 statute holds. And we don't think that any of the
20 evidence they produced makes any difference.

21 But I would like to go ahead and put
22 some law on the record or cite some cases. Mr. Barnes
23 has stated correctly that in cases where we have a
24 preponderance of the evidence burden here that the
25 party only has to provide a mere scintilla of evidence.

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1 That is true. But in the case of Opternative, Inc.,
2 versus South Carolina Board of Medical Examiners --
3 that's a Court of Appeals case just heard in 2021 --
4 the Court says, "A scintilla is a perceptible amount.
5 They're still must be a verifiable spark, not something
6 conjured by the shadows."

7 There's a lot of evidence, a lot of
8 stuff that's been thrown out, but none of it matters in
9 this case. And these are what this court is referring
10 to in our position as just shadows, trying to create
11 credibility issues which don't matter on summary
12 judgment. As a matter of fact, and this is an
13 important case, too, we think in this case -- and that
14 is Hansen versus DHL Lab, Inc. -- and in that case the
15 Court said, "Questions of credibility can make summary
16 judgment inappropriate under some circumstances.
17 However, where summary judgment is granted partially on
18 the basis of the non-moving parties own statements, the
19 granting of summary judgment is proper in spite of
20 credibility questions regarding the moving party."

21 In this case, if Your Honor hasn't --
22 I'm sure you've read -- but the deposition testimony of
23 Mr. Singleton is crucial. Even though Mr. Barnes
24 correctly stated that after I had him identify every
25 piece of the original note and mortgage, and told him

1 on the record that this was the one he had seen in
2 Florida, he still went through every single page and
3 every single portion of the note and the mortgage that
4 are important. Such as the part that allows transfers
5 to be made; such as the parts say what his payment
6 should be, his interest rate. He testified to all of
7 that on the record.

8 So there's no question. There's been no
9 proper summary judgment evidence produced by the
10 defendant to show that that testimony in any way was
11 contradicted. As I said, later on in the deposition,
12 Mr. Singleton said, well, I'm not sure. Not being sure
13 is not proper summary judgment evidence. He had
14 already identified the note and mortgage in the record.
15 That evidence is clear.

16 The other thing is Mr. Barnes in his
17 argument kept saying, well, we don't know, we don't
18 know, we don't know. Well, on his affirmative defenses
19 and in this summary judgment, the burden is on him, not
20 us. The burden is on him to know if he has proper
21 affirmative defenses, he has to know. And all he has
22 produced is evidence that says we don't know, we don't
23 know, we don't know. And as far as the burden on that,
24 the case of Lord versus D&J Enterprises, a Supreme
25 Court case from 2014, the Court says that "The initial

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1 responsibility in a summary judgment may be discharged
2 by pointing out to the trial court that there's an
3 absence of evidence to support the non-moving party's
4 case. And it is not necessary for the moving party to
5 support its motion with the affidavits or similar
6 materials negating the opponents claim." So in this
7 particular case, all the burden for any of the
8 affirmative defenses that have been asserted by the
9 defendant is on Mr. Barnes and his client, not on us.

10 As far as the argument that there's no
11 evidence of the transfers from the original lender to
12 MERS because of bankruptcy, there's been no summary
13 judgment evidence showing what happened to that
14 company. We don't know if that was a Chapter 11, if
15 the company still continued. There's no evidence of
16 any of the things. This is argument that's being made
17 by Mr. Barnes without any evidence.

18 Oh, and as far as the evidence of
19 perjury on the lost note affidavit, there's no evidence
20 that this client, that this plaintiff, this holder of
21 this note ever perjured anything. As a matter of fact,
22 the whole deposition of Mr. Bellanti is in record, the
23 recent one, Your Honor. And as a matter fact, what he
24 said ultimately is there must've been some kind of
25 mistake by that person because we have the note. We

1 know where the note is. We have the bailee letters on
2 the note. Mr. Bellanti never perjured himself.
3 There's no unlawful act on the part of this plaintiff.
4 So that kind of defense just isn't gonna fly either.

5 Mr. Barnes also said, well, so and so
6 would have to be deposed for us to show this. Well,
7 he's had 11 years to depose. And Your Honor gave him
8 extra time. It's time for this case to be resolved.
9 We want to get it resolved. And we don't think any
10 further discovery should be allowed if that is what he
11 was suggesting. And, Your Honor, just to close out,
12 Mr. Barnes said that what we have produced is
13 speculation. I would suggest to the Court that what we
14 have produced is the only concrete evidence in this
15 case. All of what Mr. Barnes has produced is nothing
16 but speculation. And we think despite the attempts,
17 there has been no production of any proper summary
18 judgment evidence that would preclude our summary
19 judgment at this time.

20 THE COURT: Okay. Thank you very much.

21 MS. WOOTEN: Thank you, Your Honor.

22 MR. BARNES: Can I state two quick
23 things, Judge, or not?

24 THE COURT: Mr. Barnes, I'll give you --
25 just some short replies to that will be fine.

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1 MR. BARNES: Paragraph 1 of our response
2 in the history of the litigation, we specifically
3 request the Court to take judicial notice of the
4 bankruptcy of People's Choice under SCRE Rule
5 201(b)(2). And we've cited the sources there. And
6 that may be determined by sources from the accuracy.
7 His accuracy cannot be questioned. So that is
8 evidence. And we've asked the Court to take judicial
9 notice of that which is allowed by the Supreme Court of
10 South Carolina.

11 THE COURT: Let me just address that for
12 you, Mr. Barnes. I did look at the bankruptcy of
13 People's Choice Home Loans, Inc. So I have looked at
14 that --

15 MR. BARNES: Okay. Great. And the only
16 other thing I wanted to close out with, Judge, is that
17 I've never heard anybody characterize sworn deposition
18 testimony and sworn affidavits produced by that party,
19 which by the way as part of the affidavits, are
20 non-hearsay admissions of interest, as speculation.

21 THE COURT: Okay. Thank you very much,
22 Mr. Barnes.

23 MR. BARNES: You're welcome, Your Honor.

24 THE COURT: I appreciate it. Would you
25 like to go back over -- unless you feel like you need

1 to --

2 MS. WOOTEN: Oh, no. I'm fine.

3 THE COURT: Okay. All right.

4 Mr. Barnes, I want to thank you for your argument. I
5 want to tell both parties that I have spent --
6 fortunately, I didn't have any cases to deal with
7 since -- well, since Friday. And I spent part of the
8 weekend studying this case. I did have a short matter
9 on Monday, I believe, which allowed me to spend a good
10 bit of time on Monday, and I had no interference
11 yesterday. I was able to delve into this case even in
12 more depth. So I have read each party's motion, the
13 supporting affidavits and deposition material attached
14 to those, the motion and the memorandum in opposition.

15 It's the view of this Court that summary
16 judgment is appropriate in this matter primarily
17 because the plaintiff has established that it is a
18 holder in possession of the instrument and has the
19 right to enter and enforce the obligation that it
20 holds. Mr. Barnes, if anything, you have proven -- and
21 I'm glad you were able to do this -- you have proven
22 one of the theories that I have personally about
23 uniform codes. Uniform codes that are adopted
24 throughout the nation nearly always favor what I'll
25 refer to as the "big guy". The small people of the

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1 world, such as Mr. Singleton, aren't really at the
2 table, in my opinion, on legislation that adopts
3 uniform codes. And for that reason we see a lot of --
4 very difficult situations arise where the Court has to
5 really go back to the legislature and say what did the
6 legislature pass in this state as to the rule that
7 we're supposed to follow. And in this state we have
8 Rule 36-3-301 which gives the plaintiff the right as
9 the possessor of the instrument to enforce the
10 instrument. In that statute, it doesn't say anything
11 about that way in which the plaintiff goes about
12 acquiring the instrument that it's in possession of.
13 That is, as Ms. Wooten has indicated, is concrete
14 evidence of the right to proceed. And I agree with
15 her. On the preponderance of the evidence, just by
16 view -- in view of the deposition testimony of your
17 client Mr. Singleton taken by Ms. Wooten, the
18 deposition evidence, in my opinion, tips in favor of
19 the plaintiff in that Mr. Singleton recognizes that he
20 owes a debt, and the only question is to whom he owes
21 it. Well, I can tell to whom he owes the debt, and
22 that is the plaintiff. He owes the debt to the
23 plaintiff.

24 Now the question is the amount of the
25 debt. Now, Mr. Barnes, there is no counter affidavit

1 filed by the defendant as to the amount of the debt.
2 And so I'm faced with trying to decide what is proper
3 in terms of the entry of the order or judgment on
4 foreclosure -- judgment in the amount of the debt. I
5 will tell you that I've struggled with a couple of
6 things about this particular note. One is the interest
7 rate. You know, Mr. Barnes, Mr. Sloan, I have no
8 authority as a court to modify an agreement. What the
9 parties agreed to is what the parties agreed to. But
10 what seems extremely unfair to me is that this case has
11 gone though, as Mr. Barnes has detailed, a number of
12 transformations in the way of how this note traveled in
13 and about in the various and sundry corporate entities
14 that may have at one time touched on possession of the
15 particular obligation.

16 All the while, plaintiff has been
17 receiving interest at the rate of something like
18 10.65 percent, I think is what the actual interest rate
19 is on the obligation. What I'm inclined to do is to
20 exercise my equitable jurisdiction and enter an
21 equitable set-off that would make for a set-off for the
22 cost and expenses that Mr. Singleton has gone through
23 to be set off against the amount of the debt that the
24 plaintiff is claiming. So what -- the set-off amount
25 is the amount of the interest that has accrued since

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1 the beginning of the debt or the beginning of the
2 lawsuit. I'm going to offset that amount of interest,
3 equitably, such that the plaintiff is only entitled to
4 recover its principal amount under the note. The
5 plaintiff has not presented any evidence where it seeks
6 the recovery of attorney's fees. So, therefore,
7 there's no interest -- there's no issue of attorney's
8 fees by the plaintiff on this case.

9 And so my ruling will be that the
10 plaintiff is entitled to summary judgment, but the
11 defendant is entitled to an equitable set-off in the
12 amount of the interest that has allegedly accrued on
13 the debt since the beginning of the lawsuit. So that's
14 gonna be the ruling of the Court. Any questions?

15 MS. WOOTEN: Your Honor, as far
16 as interest --

17 MR. BARNES: No, Your Honor.

18 MS. WOOTEN: -- that's accrued since the
19 lawsuit, the plaintiff will still be allowed to the
20 interest --

21 THE COURT: Excuse me. Let me clarify
22 that. Interest accrued since the date of default.
23 Since the date of default. Interest accrued since the
24 date of default is gonna be equitably set-off because
25 of what is by Mr. Barnes' litany of the course of

1 travel that this particular instrument that you're
2 seeking to enforce has taken over the ten-year period.

3 In fact, let me say one other thing.
4 You would not be aware of this, Ms. Wooten, but
5 Mr. Barnes and Mr. Sloan will be well aware of this.
6 This case was set for trial back in the mid teens,
7 2010s. I forget; 2016, 2015, something along these
8 lines. It was in July, as I recall. The case was set
9 for trial. And I got a call from I think the lawyer
10 from the plaintiff at the time saying, Your Honor, we
11 need to continue the case because my witness can't be
12 available. I said I can't believe that your witness
13 isn't available. You've had plenty of time. There's
14 been lots of notice. There's a scheduling order in
15 effect. We're gonna go forward on this case. And I
16 made it certain that the case would go forward. What
17 did the plaintiff do? The plaintiff assigned the note
18 to another entity precipitating a substitution of
19 parties, hence the case was continued. That kind of
20 activity, in my opinion, is inexcusable. A corporate
21 entity can find a corporate person to testify to the
22 amount of the debt and it's possession of the
23 property -- of the debt, of the instrument.

24 That is the exact kind of rubbish that
25 your client who now has possession of this property,

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1 the history of this, possession of the instrument, is
2 the kind of rubbish that I have seen in this litigation
3 which has lasted over ten years. It's absolutely
4 unfair to this defendant. But because the law is on
5 your side, you're entitled to enforce it. And if there
6 is ever a case where a legislature should see the
7 abuses that go on in the transfers of notes and
8 mortgages, this case is, in my opinion, a perfect
9 example of how abusive that can be. Unfortunately, the
10 law is what the statute says it is. I have no choice
11 but to enforce the note, allow you to enforce the note,
12 and foreclose the mortgage. My only avenue of
13 explaining how distasteful this process has been is to
14 set-off the amount of the interest that's been accruing
15 by virtue of the good work that Mr. Barnes and
16 Mr. Sloan have done during the process of this
17 entire -- the life of this case. So that I think is a
18 proper remedy under the circumstances, and that's what
19 I will order.

20 MR. SLOAN: Yes, sir.

21 THE COURT: Okay.

22 MR. BARNES: Thank you, Your Honor.

23 MS. WOOTEN: Yes, sir. Will we also be
24 able -- I'm sorry.

25 THE COURT: Go ahead, Ms. Wooten.

1 MS. WOOTEN: I just was gonna ask will
2 we be able to go ahead and get the case -- get the sale
3 set?

4 THE COURT: Sure.

5 MS. WOOTEN: When is the next date?

6 THE COURT: Well, you gotta -- we got to
7 get an order signed first.

8 MS. WOOTEN: It will be December then.

9 THE COURT: I have to have an order.

10 MR. BARNES: Your Honor, I didn't hear
11 what Ms. Wooten --

12 THE COURT: She's wanting to know when
13 she can sell the property. I told her we'll set the
14 sale once I sign an order, okay. Let me get an order
15 signed.

16 Now, here's what I want the lawyers in
17 this case to do. Ms. Wooten, you're gonna be
18 responsible for drafting the facts of the case that
19 establish the obligation and your -- the fact that your
20 client now possesses the note. Mr. Barnes, Mr. Sloan,
21 I want you to draft a set of facts that will allow me
22 to make a ruling on the sort of torturous nature in
23 which this loan has gone through. Well, you made the
24 recitation in your presentation, Mr. Barnes. It
25 shouldn't be too much difficult for you to do that so

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1 that I can have those facts in my opinion. And that
2 will be appealable. And, of course, this is an equity
3 case. The Court can take its own view of the facts
4 once it goes up, if it goes up. But I want your
5 evidence, Mr. Barnes, as factual matters so that I can
6 award the set-off, the equitable set-off.

7 MR. BARNES: What's the time frame you
8 need that by, Judge?

9 THE COURT: Tell me how quickly you can
10 get it to me?

11 MR. BARNES: End of next week.

12 THE COURT: Okay. How about 15 days
13 from today, y'all have these facts sent to me. And I
14 will -- and then you can do the -- Ms. Wooten, you can
15 do the conclusions of law that you're entitled to
16 foreclosure of the mortgage, and the rest of the
17 language for the mortgage foreclosure, which is sort of
18 typical in a case of this nature.

19 MR. BARNES: Your Honor, may I say
20 something?

21 THE COURT: Go ahead, Mr. Barnes.

22 MR. BARNES: I know Ms. Wooten
23 apparently just jumped up and said how fast can she
24 sell the property. We all know it doesn't happen that
25 quick. And if we do decide to take this up, we would

1 be filing a motion for stay pending appeal, and there's
2 a bunch of arguments to be made on that. So we don't
3 know how quickly we can get a hearing on that. So I
4 would respectfully request that any sale date be no
5 earlier than 60 days from the entry of the order.

6 THE COURT: Okay. Well, I'll take that
7 under consideration. Mr. Barnes, please be aware that
8 in South Carolina that the -- just go ahead and put it
9 to you so that you understand it. In order to stay the
10 sale of the real estate in South Carolina, you will
11 have to post a supersedeas bond -- supersedeas bond
12 that would be based on an amount that I would set if
13 you do intend to move to stay the sale.

14 MR. BARNES: I understand.

15 THE COURT: And, typically, it's
16 somewhere in the neighborhood of one and a half to two
17 times the amount of the debt. So it is -- I don't know
18 what it will be. There will be a finding on that we'll
19 have to go over, but . . .

20 MR. BARNES: And there's some other
21 arguments I wanted to make on that, too. But not --
22 another day.

23 THE COURT: It's another day. That's
24 right. Time for another day.

25 All right. I look forward to receiving

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1 your facts, and then I'll try to cobble it together for
2 an order, get the order signed, and then we'll address
3 the sale.

4 MS. WOOTEN: Thank you, Your Honor.

5 THE COURT: Okay. Thank you very much.

6 MR. SLOAN: Thank you, Your Honor.

7 MR. BARNES: Judge, I'm sorry, before we
8 go, when you say address the sale, you mean are we
9 gonna have a hearing on that? Are you gonna do that?

10 THE COURT: I'll set the sale. If you
11 want to move -- if you want to move to continue it or
12 set it to a later date, you can do that. Typically,
13 I'll set it out. I'll take into consideration your
14 request for 60 days.

15 MR. BARNES: Thank you, Judge.

16 THE COURT: Thank you.

17 - - - - -

18 (Whereupon, there being nothing further,
19 the hearing concluded at 12:55 p.m.)

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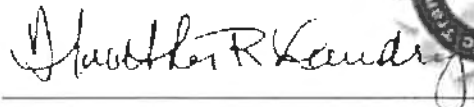

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C E R T I F I C A T E
STATE OF SOUTH CAROLINA;
COUNTY OF DORCHESTER

I, HEATHER R. LANDRY, Certified Verbatim Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report (by voice) the foregoing hearing of the captioned case; and that the transcript represents a true, accurate, and complete record of the testimony so given to the best of my skill and ability.

I further certify that I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor have any interest in the outcome of this action.

WITNESS MY HAND AND OFFICIAL SEAL this 18th day of October, 2022, in the County of Dorchester, State of South Carolina.

Heather R. Landry, CVR
and Notary Public
My Commission Expires:
April 10, 2024

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) C/A No. 2011-CP-18-00871

U.S. Bank Trust NA, as Trustee for)
Waterfall Victoria Grantor Trust II,)
Series G,)

Plaintiff,)

v.)

Jamie Singleton and Indigo Pointe)
Homeowners' Association,)

Defendants.)

MOTION HEARING

ORIGINAL

Thursday, January 26, 2023
11:03 a.m. - 12:28 p.m.

The hearing before the Honorable James E. Chellis, Master-In-Equity for Dorchester County, was taken at 5200 East Jim Bilton Boulevard, St. George, South Carolina on the 26th day of January, 2023 before Patricia Andrews, Court Reporter and Notary Public in and for the State of South Carolina.



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1 **CALL TO ORDER:**

2 **THE COURT:** This is the matter of U.S. Bank, NA, as
3 Trustee for Waterfall Victoria Grantor Trust II,
4 Series G versus Jamie Singleton and Indigo
5 Pointe Homeowners' Association,
6 Defendants. Civil Action Number is 2011-
7 CP-18-00871.

8 We're going to take a brief recess so that
9 we can get the technical matters worked out.
10 Mr. Barnes is appearing virtually and we have
11 set up a Zoom meeting, or a Zoom meeting is
12 being set up for him to attend. And, so while
13 we're waiting for that to happen, we're going
14 to take a recess on the record. Okay?

15 **MR. HAYES:** Thank you, Your Honor.

16 **THE COURT:** Is that okay?

17 **MR. SLOAN:** Yes. Yes, Your Honor.

18 **THE COURT:** All right. Everybody's in agreement,
19 thank you.

20 **(Off the record from 11:05 a.m. until 11:24 a.m.)**

21 **THE COURT:** So, Jeff, while we were trying to get
22 this electronic courtroom set up, at
23 approximately five after 11:00 this morning, I
24 went ahead and put the caption of the case on
25 the record. Then we took a short recess to get



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1 the technical matter set up. Nothing's been
2 said between the time I took the recess, and
3 now that you're on board, we can all hear each
4 other and see one another.

5 So, at this point, I am ready to hear from
6 the moving party, which would be the Plaintiff
7 in this action of this particular proceeding,
8 and the Plaintiff's Request to Alter or Amend
9 the Judgment pursuant to Rule 59(e) of the
10 South Carolina Rules of Civil Procedure.

11 Ms. Taylor, are you going to present the
12 argument, or is Mr. ---

13 **MS. TAYLOR:** Mr. Hayes is going to ---

14 **THE COURT:** --- -Hayes going -- Mr. Hayes is gonna
15 present it?

16 **MR. HAYES:** Yes, sir.

17 **THE COURT:** Oh, good, good. Great. Good to have
18 you here.

19 **MR. HAYES:** I'm going to try to present the
20 argument, Your Honor.

21 **THE COURT:** There you go. All right.

22 **ISSUE OF BIAS BY MR. HAYES:**

23 **MR. HAYES:** All right. Your Honor, Dean Hayes for
24 the Plaintiff in this case. You asked the
25 Court to first address that the bias or



1 prejudice argument, Your Honor?

2 **THE COURT:** That's correct.

3 **MR. HAYES:** We -- the Plaintiff acknowledges you
4 have been very courteous, you have demonstrated
5 patience in this case, and you've had great
6 dignity in the case. What we're questioning,
7 if you look at *Ellis v. Procter and Gamble*
8 *Distributing Company*, it says the judge's
9 impartiality may -- might reasonably be
10 questioned when its factual findings are not
11 supported by the record. The Court found that
12 the Plaintiff and his predecessors
13 unnecessarily protected the litigation with
14 multiple endorsements, allonges, assignments,
15 substitution of counsel and unfair business
16 practices, Your Honor. There were multiple
17 assignments. I don't think I've ever seen this
18 many -- I've handled a lot of foreclosure
19 cases, and I don't think I've handled this many
20 assignments.

21 And you said that the Plaintiff's actions
22 during the foreclosure have failed to exhibit
23 good faith and failed to exhibit fair dealings.
24 The problem is, you said that the Plaintiff
25 lost the Note during the litigation. That's



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1 true, but the Plaintiff also had the Note, the
2 original Note, endorsed in blank, which makes
3 it their paper, in 2014 at the hearing. And
4 your -- the order that you issued, I think it
5 was you, that issued it on May the 13th, 2014,
6 even said that they had the original Note at
7 that hearing. So that should have ended the
8 discussion about who could -- that had the --
9 who was the holder of the Note and who could
10 enforce it. I think it's 30- -- is it 30 --
11 the statute says that the holder of a bare note
12 can enforce it even if they obtained it
13 wrongfully. So, they had the original Note.

14 You referred to it in 2014, instead, in
15 this case, the Defendant went out to find the
16 true owner of the note. And it has taken them
17 many years to find the true owner. And, Your
18 Honor, they knew the servicer the whole time.
19 If you look at the *Draper* case, the servicer
20 takes the payments. The servicer is the one
21 who applies the payments. The servi- -- the
22 mortgage servicer is the one who pays the
23 taxes, who pays the hazard insurance. Instead,
24 they were looking for the true owner. It's
25 like a property management company. If you're,



1 if you're renting property, and if you're the
2 tenant, and your rent is due, do you pay the
3 property management company if there is one, or
4 do you try to go look for the true -- I don't
5 have to find the true owner before I'll pay my
6 rent. It's the same thing. It, to me, it was
7 a goose chase just going for eight years. And
8 it wasn't, it wasn't because of the Plaintiff
9 doing anything. Well, there were multiple
10 assignments, but, also, the Plaintiff did have
11 the original Note at the hearing in 2014. Your
12 Honor acknowledged that.

13 **THE COURT:** Which order was that?

14 **MR. HAYES:** May 13th, 2014, Your Honor.

15 And there's actually a copy attached ---

16 **THE COURT:** What page and paragraph?

17 **MR. HAYES:** Your Honor, it is -- let's see. Your
18 Honor, it is, it is page four, first full
19 paragraph.

20 Plaintiff argues that title into the note
21 is established by the one who holds the note.
22 Moreover, as the holder of the Note, Plaintiff
23 possesses the right to enforce the Note. At
24 the hearing, Plaintiff's counsel demonstrated
25 her client possessed the original Note, holding



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1 it in her hand and referring to it a number of
2 times.

3 Now, the Note was subsequently lost. But
4 that should have been the end of who could
5 enforce the Note, in 2014, Your Honor.

6 **THE COURT:** Who was the Plaintiff's lawyer back
7 then?

8 **MR. HAYES:** I'm sorry?

9 **THE COURT:** Who was the Plaintiff's --your lawyer on
10 -- who was the Plaintiff's lawyer?

11 **MR. HAYES:** Your Honor, at that time, it was -- I'm
12 sorry?

13 **MS. TAYLOR:** Erica Lybrand.

14 **THE COURT:** Erica Lybrand?

15 **MR. HAYES:** Oh, yeah, Erica was the attorney.

16 And if you look at the Note, it's attached
17 as Exhibit B to her Memorandum. It looks -- it
18 sure looks like the Note is endorsed in blank.
19 Well, actually, yes, it looks like it -- so we
20 had the original Note, Your Honor, with the
21 Plaintiff's predecessor. And then, if you look
22 at the Defendant's, I think, Memorandum in
23 Opposition to the Plaintiff's Motion for
24 Summary Judgment in this case, it goes on for
25 about, I think, about 20 pages, just talking



1 about trying to run down the original owner of
2 the Note. Your Honor, all they had to do was
3 pay the servicer. If my -- the federal law
4 requires that when it's sent from one servicer
5 to another ---

6 **THE COURT:** Well, let's stop before we go too much
7 further.

8 **MR. HAYES:** Okay.

9 **THE COURT:** As I indicated in the correspondence
10 that I sent to counsel about a week ago, ten
11 days ago, I wanted to address the bias issue
12 first ---

13 **MR. HAYES:** Okay. And ---

14 **THE COURT:** --- and determine what the facts you
15 want me to consider to determine whether or not
16 I should recuse myself from the case, or are
17 you withdrawing that, the concept of bias and
18 prejudice and therefore consideration of
19 recusal is really not in front of us. I mean,
20 that's the ---

21 **MR. HAYES:** Right.

22 **THE COURT:** --- and I really want to talk about it
23 first. If you could help me out, I'd
24 appreciate that, on that, and getting too far
25 off ---



1 **MR. HAYES:** Okay. It may seem that way, Your Honor,
2 but what I'm trying to show is that the facts
3 are different from what the Court found.

4 **THE COURT:** Okay.

5 **MR. HAYES:** I mean, the Court, in it's Order, found
6 that, correctly found that the Defendants'
7 defenses had, quote, no merit, were conclusory
8 assertions, or that the Defendant offered no
9 evidence in support of its claims. But it was
10 the Plaintiff who was delaying this case? If
11 -- Your Honor, it was the Defendant who was
12 delaying this case. The -- again, they took
13 multiple depositions, and you found in the
14 Order that -- well, the Court found in the
15 Order that the delay in this case was caused
16 solely by the Plaintiff. And, if you look at
17 ---

18 **THE COURT:** You're talking about the current order
19 when you're talking about ---

20 **MR. HAYES:** Yes, sir. And, I think the Court also
21 exhibited some bias when on pages 57 and 58 of
22 the transcript you discussed the small people
23 of the world, and on pages 61 and 62 of the
24 transcript where you used rubbish several
25 times.



1 And I think bias is also shown by the fact
2 that the Court, *sua sponte*, denied the
3 interest, escrow advances, and corporate
4 advances, even though you didn't request that
5 they send out anything -- item -- itemize
6 anything. You just out denied it without the
7 Defendant requesting it. The Court denied it
8 on its own motion, and I think that shows bias,
9 Your Honor.

10 **THE COURT:** Now, let's let -- who is going to
11 respond to that issue from the Defendants'
12 point of view?

13 **MR. SLOAN:** Mr. Barnes will, Your Honor.

14 **THE COURT:** All right. Mr. Barnes?

15 **MR. BARNES:** Which specific issue am I ask -- being
16 asked to respond to, Judge? Because Mr. -- I
17 can't remember the fella's name ---

18 **THE COURT:** Mr. Dean Hayes. Mr. Hayes. What I
19 asked, is that they address the issue of bias
20 first, to determine if, in fact, there is bias
21 in the record or bias by me and against this --
22 I guess, against this client. I'm not sure.
23 Are you saying against your client?

24 **MR. HAYES:** Yes, sir.

25 **THE COURT:** Or just bias in general against ---



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1 **MR. HAYES:** Well, I think it's bias against -- in
2 general. And I think it's sometime -- I mean,
3 I was here when you, when you had -- you called
4 -- when you were first appointed, when you
5 called everyone down to the courtroom and
6 wanted to talk to the foreclosure bar, I was in
7 here at that time. And one of the things you
8 said, was that any time that a mortgage is
9 transferred, you were going to require that the
10 new holder of the mortgage start a new action.
11 Now, you backtracked on that ---

12 **MR. BARNES:** No, no. That's not what he said.

13 **MR. HAYES:** --- when I received, I received other
14 information. But at that time, I just thought
15 you had a bias against mortgage servicers
16 transferring notes and mortgages.

17 **THE COURT:** Mr. Barnes?

18 **RESPONSE BY MR. BARNES:**

19 **MR. BARNES:** Your Honor, it's a threshold -- there's
20 a threshold matter. If -- looking at the
21 original Motion to Alter or Amend, and then
22 looking at the Reply that was filed, after we
23 filed our Response in Opposition, I'm not real
24 clear as to whether or not counsel is seeking,
25 at this point, through a Rule 59 Motion to



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1 Alter or Amend, to disqualify the Court --
2 there was no motion for disqualification filed.
3 And there is no law cited in either the Motion
4 to Alter or Amend, or the Reply, that supports
5 the proposition that simply because a party in
6 unsworn fashion, and without any kind of
7 affidavit or evidence, alleges some sort of
8 bias, if that entitles a party to alter or
9 amend a judgment.

10 But also very -- and as was cited in our,
11 in our Response, the fact that you ruled
12 against the Plaintiff on certain issues is not
13 proof of prejudice by Your Honor, even if there
14 was an appeal and it was held that you
15 committed some kind of error in your rulings.
16 But most importantly, and Mr. -- the
17 Plaintiff's counsel, I'm just gonna refer to
18 him that way 'cause he's new into the case, was
19 ignoring the applicable law from the South
20 Carolina Supreme Court that we cited in our
21 Response that an alleged bias or prejudice,
22 quote, must stem from an extra judicial source
23 and result in a decision based on other than
24 what the judge learned from his participation
25 in the case. That's the *Payne* case, P-A-Y-N-E,



1 283 S.C. 210, from 1984, citing a case from the
2 United States Supreme Court, *The United States*
3 *versus Grinnell*, G-R-I-N-N-E-L-L.

4 Everything that the Plaintiff has alleged
5 constituting this purported bias, is a result
6 of matters Your Honor learned since being in
7 this case. And it's no secret, Your Honor has
8 been in this case since day one. There has not
9 been a change of judge, at least in the, I
10 think it's almost 10 years that I've been in
11 this case. So everything that the Plaintiff
12 argues is based upon what Your Honor learned
13 from your participation in this case. There
14 has been no allegation, and no proof, and no
15 evidence, whatsoever, that this purported bias
16 or prejudice came from some extra judicial
17 source.

18 So, on that threshold ground alone, Your
19 Honor, the request -- on those threshold
20 grounds alone, the fact that what you learned,
21 you learned from being in this case, and the
22 lack of any decisional law, or procedural rule
23 which would allow a party to alter or amend a
24 judgment as a remedy for alleging bias and
25 prejudice in an unsworn fashion, the motion



1 should fail right there, on those threshold
2 grounds.

3 Now, I can comment on the other things the
4 Plaintiff started to go into about the delays
5 and so forth, but I don't know if I need to do
6 that, at this point, unless the Court requests
7 me to do so.

8 **THE COURT:** All right.

9 Mr. Hayes, in the transcript in which I
10 made the comment about -- the general comment
11 about uniform, uniform codes ---

12 **MR. HAYES:** Yes, sir.

13 **THE COURT:** --- and I use the term the big guy and
14 little guy.

15 **MR. HAYES:** Okay.

16 **THE COURT:** Your perception of that is that that
17 shows a bias on my part? I mean, this is after
18 I've already ruled, right? I mean, I had
19 already made the ruling.

20 **MR. HAYES:** Right. But the thought had to be in
21 your head at the time you made the ruling, Your
22 Honor.

23 **MR. BARNES:** I'm sorry, Judge. I -- Judge, I can't
24 hear what you're saying.

25 **THE COURT:** I'm referring to his motion, the



1 original motion and the statements contained in
2 the original motion under subsection C, page 10
3 of the original motion where they -- the
4 Plaintiff is asserting that, that in my
5 comments concerning uniform codes that -- what
6 I was doing was expressing what I understood
7 the way these codes get passed is that,
8 basically, they're -- and perhaps I'm wrong.
9 I mean, I may be totally wrong on that. But
10 the perception that I've always had was that
11 the court lobbyists are the ones who are able
12 to influence the legislators to pass these,
13 those codes. And generally the codes favor, in
14 general, favor a more -- seem to favor the
15 corporate aspect of the business of
16 corporations and other parties, as opposed to
17 the ordinary citizen who is faced with being
18 held by the terms and conditions of these
19 codes.

20 Now, I've been living with The Uniform
21 Commercial Code since I began practicing law.
22 And I don't think I've ever not used the code
23 in terms of it's applicability in, you know,
24 sales of goods and services, or in negotiable
25 transactions under Article 3, secure



1 transactions under Article 9. I mean, I have
2 been on both sides of those cases throughout my
3 career.

4 **MR. HAYES:** Yes, sir.

5 **THE COURT:** And so, it's very difficult to -- I'm
6 just -- one comment about the way the
7 legislation seems to get formed ---

8 **MR. HAYES:** Yes, sir.

9 **THE COURT:** I don't -- in my opinion, doesn't mean
10 that I can't apply the law impartially. I
11 mean, it's just -- I mean, do you think that it
12 creates such an inherent impartiality that it
13 would -- that I would be unable to apply the
14 statutes under the Uniform Commercial Code? I
15 mean, I've -- one of them -- and I was
16 representing the seller of goods in one case in
17 which, I think, it's pretty much a similar case
18 in South Carolina regarding notice of non-
19 conformity. It's *Hunt versus Southeastern*
20 *Steel* and I was represented Southeastern Steel.
21 And we were able to establish that Hunt had not
22 given proper notice of the non-conforming
23 goods. It was affirmed on appeal.

24 I've had countless cases in which -- that
25 appeared before me by mortgage holders,



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1 servicers asserting their rights under The
2 Uniform Commercial Code under Article III. I
3 mean, they alleged -- and all of them, I mean,
4 most of all -- most of the times I've been --
5 the rule is in favor of the corporate entity,
6 holder of the note or the, or the servicer,
7 whoever the plaintiff might be, you know, vast
8 majority of the cases.

9 So I don't think my comments prevent me
10 from -- when I put this robe on, from having an
11 impartial, an independent view of what the law
12 is. I'm going to follow what the legislation
13 directs that I follow. I've always taken that
14 position. I don't create laws from the bench.
15 I don't try to do anything other than what is
16 right in front of -- under the circumstances.
17 And I earnestly, with a certain conscience,
18 believe that I do that impartially.

19 **FINDING OF THE COURT:**

20 **THE COURT:** So I'm gonna, I'm going to find that I am
21 not biased in this case, despite the argument that
22 you've made, that I'm not impartial, or that
23 I'm partial either to one side or the other.
24 I mean, I just looked at the facts as they were
25 presented to me. I think I should continue to



1 hear the case. I mean, we're in the middle of
2 a motion to amend an order that I've signed.
3 So, if -- I'm not sure whether you want to
4 state an objection to that or you want to
5 accept that?

6 **MR. HAYES:** Your Honor, I'll accept it. And, I
7 mean, again, you've been very courteous and
8 everything, and the only reason is -- we were
9 requesting it is the way you found the facts
10 is, we thought, was impartial.

11 **THE COURT:** Okay.

12 **MR. HAYES:** Okay.

13 **THE COURT:** All right. So let's do this, then.
14 Let's go back, and I'm going to thank you for
15 pointing out 2014, or whatever, I think it was,
16 in which I made the finding that Plaintiff, and
17 this is on page four of my order dated -- oh,
18 golly. We don't have the date stamps on these
19 -- each page here. We'd have to look at the
20 file.

21 **MR. HAYES:** It was May 13th, Your Honor.

22 **THE COURT:** All right. Well, I signed it on May the
23 12th and it was entered May 13th, 2014, and on
24 page four -- Jeff, I'll give you an opportunity
25 to pull that, that order up, if you'd like.



1 In that order, there is a finding -- this
2 was an order denying your Motion for Summary
3 Judgment back in May of 2014. And in that
4 Order, page four, I made -- I'm going to
5 publish that for the record in this hearing.

6 **MR. HAYES:** Yes, sir.

7 **THE COURT:** Plaintiff argues that title to the Note
8 is established by the one who holds the Note.
9 Moreover, as the holder of the Note, Plaintiff
10 possesses the right to enforce the Note. At
11 the hearing, Plaintiff's counsel demonstrated
12 her client possessed the original Note, holding
13 it in her hand and referring to it a number of
14 times. Plaintiff also argues that it has
15 standing to prosecute the foreclosure of the
16 Mortgage pursuant to 36-3-301, that's South
17 Carolina Code, as Plaintiff is a holder of the
18 Note, and therefore, entitled to enforce the
19 mortgage which derives from the Note the
20 Plaintiff holds.

21 My -- so with that -- so, I put that on
22 the record for you.

23 **MR. HAYES:** Yes, sir.

24 **THE COURT:** Do you have some more you want to argue
25 before we turn it over to Mr. Barnes?



1 **MR. HAYES:** Yeah, our -- about the interest and
2 everything else, Your Honor.

3 **MR. BARNES:** Sure, or ...

4 **MR. HAYES:** Yeah, you can turn it -- yeah, go ahead
5 and turn it -- that, that specific issue, is
6 that what you're asking, Your Honor? Are you
7 wanting to turn over that specific issue to Mr.
8 Barnes?

9 **THE COURT:** No, I was going to let you go ahead and
10 complete your argument on the amendment ---

11 **MR. HAYES:** Oh, okay.

12 **THE COURT:** --- of the order so that I can ---

13 **MR. HAYES:** The alter or amend, okay. Okay, Your
14 Honor.

15 **THE COURT:** Just respond in full.

16 **MR. HAYES:** Okay. Thank you, Your Honor.

17 **MOTION TO ALTER OR AMEND BY MR. HAYES:**

18 **MR. HAYES:** Your Honor, on the interest issue, now,
19 we had filed two Memoranda in Support. I mean,
20 of course, that's incorporated into the
21 argument today. In your order on the interest
22 you said, or the Court concludes that it should
23 exercise its equitable power to set off the
24 amount due to the extent the Plaintiff is
25 asserting a right to accrued interest and



1 attorney's fees and costs.

2 First, the Court does not state what
3 equitable maxim it uses for the setoff, as it
4 finds the Defendant has not presented evidence
5 to support any of its defenses. And in there,
6 again, you've -- the Court's order says that
7 there's no evidence to support the Defendant's
8 defenses. The Defendant makes conclusory
9 assertions but yet it's, it's -- you're, you're
10 not granting us interest in the case. The
11 Court *sua sponte* sets off the interest and
12 attorney's fees. The Defendant did not object
13 to the interest and attorney's fees and costs.
14 The Plaintiff believes it was error for the
15 Court to provide Defendant relief for which the
16 Defendant did not request.

17 Third, and in your -- one of the cases you
18 wanted us to look at, Your Honor, was *Anderson*
19 *versus Purvis*. And I should emphasize, every
20 case from that 1947 opinion, and one of the
21 opin- -- one of the cases that popped up was
22 the 1951 *Anderson versus Purvis* appeal. And in
23 that 1951 case, the court said the rule in
24 equity -- in that case, Your Honor, the issue
25 was whether the court could add interest to the



1 amount due to the physician for the services he
2 provided to the deceased owner. And the court
3 said, in ruling that he could, but only to a
4 certain extent because it was an equitable
5 claim, the court said, upon demands bearing
6 interest at law, the court of equity is, it
7 seems, bound to allow interest. But where the
8 demand does not bear interest at law, interest
9 will or will not be allowed according to the
10 equity of the case.

11 Your Honor, a promissory note, and that
12 kind of promissory note is an action at law,
13 and the court -- and there's a couple of United
14 States Supreme Court cases, I'm just going to
15 say *Redfield* because I can't pronounce the last
16 name starting with a Y, it said where interest
17 is reserved expressly in the contract, it
18 becomes part of the debt and is recoverable of
19 right. So if it's in the contract, and you
20 find the contract is enforceable, you have to
21 award the interest.

22 **THE COURT:** What does the word reserved in the
23 contract mean? What does that mean?

24 **MR. HAYES:** I'm sorry?

25 **THE COURT:** What does the word -- what are the



1 phrase reserved in the contract, what does that
2 mean?

3 **MR. HAYES:** Well, it -- if the contract calls for
4 interest, like in, like in the *Bell* case. In
5 that case, Judge Kimball reduced the interest
6 rate, and the court said you can't do that.
7 That's part of the contract. That goes back to
8 the *Redfield*, what *Redfield* said, and it also
9 goes back to what the *Anderson v. Purvis* case,
10 the second case, the 1951 case, talks about.
11 You found that the Note was enforceable, but
12 yet, you decided not to enforce the interest.

13 **THE COURT:** No, I think my order states that -- let
14 me read it again. I don't -- I think my order
15 states that it was -- the amount due was what
16 the Plaintiff was claiming. That I was setting
17 off that amount. I don't think I denied
18 interest, I just offset it.

19 **MR. HAYES:** Your Honor, I don't think you can offset
20 it. And, again ---

21 **THE COURT:** I know, but I want to -- let's address
22 whether or not I ---

23 **MR. HAYES:** Okay, that's fine.

24 **THE COURT:** --- whether or not I ordered ---

25 **MR. HAYES:** Okay.



1 **THE COURT:** --- the full amount of the debt first,
2 and then -- I mean ...

3 **MR. HAYES:** Your Honor, may I?

4 **THE COURT:** Yes, sir.

5 **MR. HAYES:** I've got a copy of the Order. I'm
6 reading from page 12, number 60, this court --
7 I'll back up to 59. Plaintiff claims as of the
8 date of the hearing, the total due to it of
9 principal, accrued interest, advances, late
10 charges, costs and disbursements, attorney's
11 fees and taxes, a total amount of 552,705.56;
12 60, this Court concludes that it should
13 exercise it's equitable power to set off the
14 amount due to the extent that the Plaintiff is
15 asserting the right to accrued interest and
16 attorney's fees and costs; 61, hence, this
17 court concludes the Defendant owes the
18 552,705.56, equitable offset by the total
19 interest of 278,102.34; 62, the Plaintiff fails
20 to establish reasonableness of the escrow by
21 failing to itemize what constitutes the escrow
22 charges.

23 **THE COURT:** Right. So it's in paragraph 61,
24 specifically, Mr. Hayes, where I say -- where
25 I conclude the Defendant owes \$552,705.56



1 equitable setoff by the total of -- in the
2 amount of 278,102.34. So, is it true that I
3 didn't -- did I -- does that not say that I
4 awarded the 552?

5 **MR. HAYES:** It does, Your Honor, but ---

6 **THE COURT:** Okay.

7 **MR. HAYES:** --- there's -- it's not a true setoff.
8 There was not a demand for the Defendant by the
9 money owed -- Defendant didn't say that the
10 Plaintiff owed it money. And there was no
11 finding that the Plaintiff owed the Defendant
12 money, Your Honor.

13 **THE COURT:** Run by that -- run that one again by me?

14 **MR. HAYES:** Okay.

15 **THE COURT:** I may ---

16 **MR. HAYES:** Hold on.

17 **THE COURT:** --- a little too subtle for me.

18 **MR. HAYES:** I'm asking the reason for the setoff,
19 there was no -- Defendant did not request a
20 setoff, and there was no finding by the Court
21 of damages for the setoff.

22 **THE COURT:** So you -- you're saying -- what you're
23 telling me is, that I have to find an amount of
24 damages that the Defendant suffered in order to
25 setoff the amount of money -- any amount of



1 money against the amount that's owed?

2 **MR. HAYES:** I think the Court has to make a -- has
3 to -- well, first of all, I think the Defendant
4 has to request it. It can't -- the court
5 cannot *sua sponte* do it. Second, I think there
6 has to be a finding of damages because how can
7 you have a setoff unless you know how much to
8 setoff?

9 **THE COURT:** Okay. All right. Let me address the
10 first issue about Defendant has not asked for,
11 asked for it ---

12 **MR. HAYES:** Yes, sir.

13 **THE COURT:** --- meaning the -- so, I went back
14 through all of the, all of the Answers that
15 have been filed by the Defendant.

16 **MR. HAYES:** Yes, sir.

17 **THE COURT:** All right. There were several Amended
18 Answers and Counterclaims, I went through all
19 of those. And in each of those Answers, the
20 prayer for relief request that I do other --
21 whatever's just and proper under the
22 circumstance, or words to that effect, and I
23 can go back and pull it if you'd like, but it
24 is what it says. Do you have a copy of the
25 last Answer, say, for instance?



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1 **MR. HAYES:** Your Honor, I did not get all of the
2 many Answers and Counterclaims, but what I did
3 print off and bring today is my very first
4 Answer.

5 **THE COURT:** Yeah, I saw that. I mean, the very
6 first Answer was to do what's just and proper
7 under the circumstances or words to that
8 effect. So it's in the prayer at the very
9 beginning that he's invoking the equitable
10 powers of the court to do what's right and just
11 under the circumstances. So that, that's why
12 we're -- and I didn't put that in the order.
13 I should have put that in the order. And I can
14 correct that, but that's -- but let me back up
15 a second.

16 Because here's a question that -- and this
17 -- it honestly came across my mind as I was
18 making this decision.

19 **MR. HAYES:** Yes, sir.

20 **THE COURT:** Do I have a right to order the setoff
21 without giving you the notice of whether or not
22 I should enter -- so should I have ordered a
23 separate hearing on the amount of the, the
24 amount of the debt and the amount of the --
25 what's setoff, or I might want to -- might want



1 to enter? That was a question that came to my
2 mind during the course of deliberating on the
3 order.

4 **MR. BARNES:** Your Honor, can I just interject
5 something on that while it's fresh in my mind?

6 **THE COURT:** Go ahead.

7 **RESPONSE BY MR. BARNES:**

8 **MR. BARNES:** Since you raised the issue of giving,
9 you know, whether or not you should have given,
10 you know, whether or not you're required to
11 give some kind of notice, first of all, there's
12 no laws cited by the Plaintiff on that. But
13 second, and more importantly, Your Honor sent
14 an email to all counsel before you entered your
15 ruling that's being attacked today, saying this
16 is what I intend to do.

17 **MR. SLOAN:** Right.

18 **MR. BARNES:** And all that issue was inured. There
19 was no objection by the Plaintiff, at that
20 time, in response to that email, as to the
21 setoff. None, whatsoever. They've only chosen
22 to complain after the fact. And there's some
23 more argument I've got on that issue, but on
24 the -- on this equitable setoff issue when the
25 Court has completed its colloquy Plaintiff's



1 counsel, but on that notice issue, I did want
2 to put that on the record.

3 **THE COURT:** Okay. Thank you, Mr. Barnes. I
4 appreciate that.

5 **MR. BARNES:** You're welcome, Your Honor.

6 **THE COURT:** I don't recall the particular email. I
7 can look it up, I'm sure. But I just want to
8 express that -- and the second point of the way
9 I fashioned the order, that I want to bring to
10 the -- or as I put it, third point, because
11 I've addressed the prayer for relief that the
12 Plaintiff starts with and continues to assert
13 within all of the Answers -- the Defendant
14 rather. The Defendant is first. So it's
15 properly -- the question that came to my mind
16 was, do I have the right to order the
17 settlement without giving -- without saying,
18 no, let's have a hearing on whether or not I
19 should issue a setoff and grant the setoff.

20 But then I thought to myself, well, this
21 is a motion for summary judgment, and I am to
22 -- if I'm going to grant the motion, then I
23 have to grant it in full. I can't just grant
24 it because that's what you asked for, a full --
25 a grant of the entire -- of a motion for



1 summary judgment of your case. And I thought
2 to myself, well, I think the better way to
3 handle this is to go ahead and order it and
4 let's see what -- and, and because I think it's
5 a proper setoff and find out whether or not
6 that is the amount that should be addressed in
7 a motion such as what you're talking about.

8 And so you've brought it to my attention,
9 and I appreciate that, that's the purpose for
10 these rules, this type of motion, bring my
11 attention back to an issue that has been
12 addressed, should it be modified, should it be
13 amended? So what is your, what is your comment
14 to whether or not it should've been addressed
15 or should I have noticed a separate hearing on
16 the issue of the setoff?

17 **REPLY BY MR. HAYES:**

18 **MR. HAYES:** Well, first of all, Your Honor, I still
19 don't think having the phrase -- having
20 something in the prayer for relief about
21 whatever is just and proper, is enough for the
22 Court to issue the setoff.

23 Second, again, if you're going to set it
24 off, there has to be some amount of damages, I
25 believe, in the setoff. How can you determine



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1 the amount to setoff without having a hearing
2 on that issue?

3 **THE COURT:** Okay. All right. Are you finished
4 arguing your motion, or is there anything else
5 you want to bring up?

6 **MR. HAYES:** Yes, sir. I'm -- no I'm not finished
7 addressing ---

8 **THE COURT:** Go ahead and finish.

9 **MR. HAYES:** Your Honor, on the escrow advances and
10 corporate advances, Section 29-3-40 says that
11 the holder of any mortgage of real property
12 when the mortgage contains provisions
13 authorizing advancements thereunder for taxes,
14 insurance premiums, public assessments, repairs
15 may make such advancements and when made, they
16 shall be secured by the mortgage and shall have
17 the same rank and priority as the principal
18 debt, thereby secured and bear interest from
19 the date of such advancements, as provided in
20 the mortgage..

21 And, Your Honor, that's in paragraph four
22 and paragraph five of the mortgage. And the
23 *Wingard* case Your Honor cites -- says the
24 court's equitable powers must yield in the face
25 of an unambiguously worded statute. That's --



1 that statute is pretty unambiguous. 29-3-40
2 says it shall be awarded, and it wasn't.

3 Your Honor, also, again, there was no
4 demand for a setoff of the escrow advances.
5 This is money that the Plaintiff advanced to
6 pay the hazard insurance premiums and the taxes
7 for the property, Your Honor. And we believe
8 it was an abuse of discretion for the Court to
9 also deny the Plaintiff the ability to itemize.
10 Remember, this is a Motion for Summary
11 Judgment. This is not a trial. This is not
12 where we have a witness coming up and
13 testifying to the escrow advances, or -- and
14 you can ask them questions. This is just an
15 affidavit. If you wanted, we could easily have
16 supplemented the affidavit by itemizing it. We
17 think it was error for the Court to just state
18 that they were -- since it wasn't itemized, you
19 weren't going to grant it.

20 **THE COURT:** Anything else?

21 **MR. HAYES:** Yes, sir. On the attorney's fees, Your
22 Honor, both the Note and the Mortgage state
23 reasonable attorney's fees. I agree the Court
24 has more leeway in that regard because you get
25 to determine what's reasonable, but I think



1 there is a limit on the discretion. In
2 *American General versus Brown*, the court said
3 a court of equity has the discretion to deny
4 their request for the entry of a deficiency
5 judgment if the granting of such appears
6 inequitable. Judge Cooper in Spartanburg was
7 denying deficiency judgments, at one point.
8 The statute required -- and I'm sure you're
9 familiar with the case, the statute required --
10 the statute actually says may, and the court
11 says no, you don't have the right, even with
12 your equitable powers, to deny a deficiency
13 judgment. And in the *Bell* case, the court said
14 you don't have the discretion to re-write the
15 contract. And that's basically what Your Honor
16 has done in this case, I believe.

17 And, again, I go back to the -- my final
18 thing, again, is the true owner argument. In
19 *Draper*, the court -- in *Bank of America versus*
20 *Draper*, the court, quoting Black's Law
21 Dictionary, stated mortgage servicing is the
22 administration of a mortgage loan, including
23 the collection of payments, release of liens,
24 and payment of property insurance and taxes.
25 And as you note, the court went on to decide



1 that, as the servicer, Bank of America had the
2 authority to maintain that action.

3 The same is true here, Your Honor. If the
4 mortgage servicer -- they expressly state it's
5 the collection of payments -- they knew the
6 mortgage servicer the whole time. Maybe they
7 didn't know the true owner, but the mortgage
8 servicer is the one who collects the payments.
9 Just like a property management company is the
10 one who collects the rent payments. It's not
11 the true owner, Your Honor. That's my final
12 argument.

13 **THE COURT:** Thank you, Mr. Hayes. I appreciate it.

14 **MR. HAYES:** Yes, sir.

15 **THE COURT:** All right. Mr. Barnes?

16 **REPLY BY MR. BARNES:**

17 **MR. BARNES:** Thank you, Your Honor. So I -- as I
18 understand it now, we're dealing with,
19 basically, the interest issue -- well, let me
20 do it this way. We're dealing with the setoff
21 issue relating to -- under that big umbrella.
22 The smaller umbrella of interest and the
23 smaller umbrella of attorney's fees.

24 **THE COURT:** That's correct.

25 **MR. BARNES:** Okay. First of all, I want to start



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1 with the position that Plaintiff's counsel take
2 with regard to this whole matter of interest
3 being fixed in actions of law. Again, we are
4 in equity. Your Honor is a Master in Equity.
5 We are in chancery court. Foreclosures are in
6 equity. There is no issue about that,
7 whatsoever.

8 Now, the *Purvis* case stated in part of the
9 opinion, and made reference to the case of
10 *Epworth, E-P-W-O-R-T-H, Orphanage versus Long,*
11 207 S.C. 384, that a wide discretion is vested
12 in the courts in determining whether interest
13 shall be allowed in equity cases, unquote.
14 Now, Judge, again, historically, how did all
15 this interest accrue since this case was filed?
16 Because, as the court found, that as the
17 Plaintiff admitted in the exhibits attached to
18 its Motion for Summary Judgment, that this loan
19 had been sold, resold, assigned, assigned,
20 transferred, assigned, etcetera. Every time we
21 got to the point of getting the case teed up
22 for trial, the Plaintiff in an apparent effort
23 to avoid a trial, wound up selling the loan.

24 And Your Honor expressed this frustration
25 to Erica Lybrand way back, I think it was in



1 2016, which is -- gave rise to the order that
2 every time the loan is sold or transferred,
3 there had to be certain items of discovery
4 produced, so that my client could be apprised
5 of what the issues were and attempt to
6 adequately defend the case. So a big chunk of
7 this interest has accrued because as Mr.
8 Singleton has said in his recent affidavit, and
9 as we take in a position, this case should have
10 resolved way, way back. But it's only because
11 of the Plaintiffs treating this loan like a Joe
12 DiMaggio baseball card and trading it, you
13 know, every few months or every six months, or
14 whatever it was, that all this interest ran up.

15 So what the Plaintiff is asking to do is
16 be rewarded for constantly tr- -- selling and
17 transferring the loan and causing this case not
18 to be at issue because the real party in
19 interest kept changing, so that the case can be
20 set for trial and all the issues resolved.

21 Now, on this issue of the -- Mr. Singleton
22 allegedly trying to change language of a
23 statute, that's exactly what the Plaintiff's
24 counsel is trying to do here. The statute
25 talks about entitlement. Well, that's what



1 Your Honor's order said, that they're entitled
2 to this. What the statute does not state, is
3 that, you know, in order for that amount to be
4 setoff, certain things have to be done. Why?
5 Because in equity, because this case was in
6 equity and because of the equitable principals
7 that we've been cited in our response, are --
8 the court in equity has broad discretion in
9 determining whether interest should be allowed,
10 because the interest here, is a product of the
11 Plaintiff's actions. And there is no dispute
12 on the record that that's where that came from.
13 As far back as, at least as far back as 2016.
14 And probably before.

15 Now, the issue is, the Plaintiff is
16 basically saying, well, it's a promissory note
17 and interest is reserved in the note and the
18 mortgage. Well, great, if they had sued in an
19 action at law, might -- that might hold true,
20 but that's not what's going on here. What
21 happened is, is the Plaintiffs sued in equity,
22 so the equitable maxims apply and the court is
23 permitted to offset whatever is awarded by the
24 way it set it off. Okay, that's, that's the
25 very fine line issue here. Is that there's



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1 nothing in the statute that precludes Your
2 Honor from doing what he did, number one. And
3 number two, in the pure technical sense, as
4 Your Honor read that sentence of the order, it
5 was awarded. The Court didn't deny awarding
6 it, and didn't deny entitlement to it. The
7 Court said you're entitled to it, however,
8 under the equitable principles that a court
9 possesses in equity, and pursuant to the
10 history of what happened in this case, I am
11 going to equitably set off the amounts that are
12 claimed due for interest since the date of
13 default.

14 Now, on this interest -- I'm sorry, the
15 issue of the escrow and corporate advances,
16 Plaintiff's counsel admitted, this is a Motion
17 for Summary Judgment, or it was decided on a
18 Motion for Summary Judgment. What is the
19 standard on summary judgment? The moving party
20 must prove the absence of any genuine issue of
21 material fact, as to anything, all right? That
22 burden, the burden that the Plaintiff has to
23 prove its damages by competent evidence,
24 requires that the Plaintiff show that there are
25 no issues as to these corporate advances or



1 these escrows. Did the Plaintiff do that? No.

2 What's supposed to have happened, is that
3 there is supposed to be an affidavit filed
4 detailing what these corporate advances were,
5 how much they were, and what they were for.
6 Same thing with the escrow advances. And the
7 Diamond Swimming Pool case, that was stating
8 that it was a trial ca- -- trial -- issue when
9 they went to trial, that we cited in our
10 Response, affirmed the Master's finding and
11 overruled objections because the same thing
12 happened there, that the Plaintiff in that case
13 did not provide the specific evidence in order
14 to allow the court to make specific findings as
15 to the damages complained of. That's what
16 happened here. The Plaintiff is basically
17 taking the position that, oh, notwithstanding
18 that it was a Motion for Summary Judgment, this
19 was the gross amount of our escrow advances and
20 our corporate advances, and therefore, we're
21 entitled to it. Well, not so, because of the
22 evidentiary burden. And, more importantly,
23 again, the fact that this is a Motion for
24 Summary Judgment. This is your shot to end the
25 case by a motion, and the burden of the moving



1 party is such that the Plaintiff has to show
2 that every I is dotted, every T is crossed, all
3 the details are there and there are no issues.
4 A blanket amount for corporate advances and a
5 blanket amount for escrows doesn't cut it,
6 doesn't satisfy the standard. So, therefore,
7 Judge, you were correct that the Plaintiff did
8 not itemize these amounts as required,
9 therefore, they are not going to be allowed.

10 And, finally, Judge, with respect to this
11 issue about -- give me a minute. Oh, whether
12 or not the -- Mr. Singleton had to request
13 anything, Mr. Singleton didn't have to make any
14 specific request for a setoff because Mr.
15 Singleton didn't have a damages counter. So
16 because those apply in action to law, and if
17 they're -- this was an action at law, which it
18 is not, and Mr. Singleton had a counterclaim,
19 which he didn't because it was not an action at
20 law, that principle, that argument might have
21 some weight, but it doesn't here.

22 As Your Honor pointed out in the -- and as
23 Mr. Sloan pointed out, from the time Mr.
24 Singleton originally answered this lawsuit
25 through the various amended answers, he asked



1 for whatever other and further relief is just
2 and proper, which is a request for equitable
3 relief. So Mr. Singleton, in this case in
4 equity, did make a request for equitable
5 relief. There is no law that's been cited by
6 the Plaintiff that says in a case in equity, in
7 a foreclosure, in order to be entitled to a
8 setoff, that the defending party must request
9 an equitable setoff and must request an amount
10 of an equitable setoff, and must prove that
11 amount. There is nothing in the law that
12 requires that at all. So it -- the amount of
13 money is that the Plaintiff is basically trying
14 to take principles that they applied to an
15 action at law and applied to this action in
16 equity, when equity says otherwise.

17 So, Your Honor, given all of this, given
18 that this Court's order sets forth chapter and
19 verse what happened in this case, given the
20 fact that Your Honor has lived through this
21 case as long as, at least me and Mr. Sloan
22 have, and the fact that the Plaintiff failed to
23 do what it was supposed to do, and the fact
24 that the Plaintiff dragged this case out,
25 through it's various machinations, sales,



1 transfers, etcetera, etcetera, there is
2 absolutely no reason, whatsoever, to vacant,
3 alter, modify, or amend this judgement at all.
4 The standard has not been satisfied. The
5 Plaintiff has not -- has failed in its burden
6 to prove ent- -- to have any entitlement to
7 have this judgment altered or modified, a large
8 portion of which, Your Honor, again, was based
9 upon this threshold argument made in the
10 original motion that the court was allegedly
11 biased. The Court's already denied that.

12 So as the court has basically denied the
13 foundation for the Plaintiff's motion to begin
14 with, the remaining part of the motion falls as
15 a matter of consequence. And we would request,
16 Your Honor, respectfully, that an order be
17 entered denying this motion in its entirety.
18 Thank you. If the Court has any questions,
19 I'll be glad to take them.

20 **THE COURT:** Thank you very much. Any reply?

21 **MR. HAYES:** Yes, sir, Your Honor.

22 **REPLY BY MR. HAYES:**

23 **MR. HAYES:** I'm glad Mr. Barnes talked about he had
24 to spend eight years finding the real party in
25 interest. In *Draper*, the court found that a



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1 servicer is the real party in interest. So it
2 took them eight years to run around trying to
3 find the owner, not the real party in the
4 interest, the owner of the note is what they
5 were trying to find. The real party in
6 interest, they were aware of the servicer the
7 whole time. They have not denied that. The
8 servicer is the real party in interest. They
9 knew that back in 2014, and they spent all this
10 time running around taking depositions, trying
11 to find what they said was the true owner, Your
12 Honor.

13 **THE COURT:** Who owns the note now?

14 **MR. SLOAN:** Your Honor, I'm not sure who owns the
15 Note now.

16 **MS. TAYLOR:** The Plain- -- I apologize.

17 **MR. SLOAN:** That's all right.

18 **REPLY BY MS. TAYLOR:**

19 **MS. TAYLOR:** But the Plaintiff still does. There is
20 a new servicer, and the only reason I'm
21 speaking up is because I think you were copied
22 on -- excuse me, an email where the servicer
23 changed right after you entered the order.
24 The holder is still the same.

25 **THE COURT:** Do you know if ---



REPLY BY MR. BARNES:

1
2 **MR. BARNES:** Well, Your Honor, on that argument, if
3 this -- if Plaintiff's counsel has taken the
4 position that we've allegedly known the
5 servicer all along, and this servicer is a real
6 party of interest, why wasn't this suit ever
7 filed with either of the servicers? Why was it
8 filed in the name of a securitized trust? Why
9 was it filed in the name of LLCs? Why was it
10 filed in the name of other parties other than
11 the servicer? They didn't do that, Judge.
12 They filed the Plaintiff -- they suit in the
13 name of the Plaintiff that was not the
14 servicer. Why didn't the servicer file it?

15 **MR. SLOAN:** Your Honor, the ---

16 **THE COURT:** Wait, wait, wait.

17 **MR. HAYES:** Your Honor ---

18 **THE COURT:** Let me ---

19 **MR. HAYES:** I thought he was finished.

20 **THE COURT:** Hold on a second. We have a little
21 problem with too many people talking. Too many
22 cooks in the kitchen.

23 Ms. Taylor, you were -- you inserted an
24 argument in the course of answering the
25 question of who owns the Note, Mr. Hayes has



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1 been arguing the position, and so you have a
2 chance to insert -- to comment. So, if, if you
3 don't mind, I'm going to give Mr. Sloan an
4 opportunity to insert a comment because he
5 stood up to say something and I said hold on.
6 Okay. Do you have an objection to that?

7 **MS. TAYLOR:** No, Your Honor. I will say, though, my
8 only intent was to answer the question ---

9 **THE COURT:** I understand.

10 **MS. TAYLOR:** --- about who has it now and the only
11 reason I did interject is because I knew there
12 was a question about that recently, that you
13 guys brought up, so I was just clarifying that
14 ---

15 **THE COURT:** Thank you very much.

16 **MS. TAYLOR:** Thanks. No objection.

17 **THE COURT:** Mr. Sloan, what was it that you wanted
18 to comment on?

19 **REPLY BY MR. SLOAN:**

20 **MR. SLOAN:** Thank you, Your Honor. Very, very
21 quickly, just to add on that the whole point of
22 the *Draper* case, just to add to --
23 to pile on what Mr. Barnes said, was
24 that a servicer can file a
25 foreclosure action. Servicer has



1 never been a plaintiff in this
2 action, of the six or seven
3 plaintiffs. If they had filed this
4 action in the name of the servicer,
5 no arguments beginning in 2013 when
6 the *Draper* case came out, two years
7 after this suit was filed. That's
8 all I was going to say, Your Honor.
9 Thank you.

10 **THE COURT:** Thank you, Mr. Sloan. Well, I'll give
11 it back to you Mr. Barnes. Did you want to
12 make a comment on that? I think you did.

13 **REPLY BY MR. BARNES:**

14 **MR. BARNES:** Just one last comment, again, Your
15 Honor, about the -- just to show what happened
16 in this case, Plaintiff's counsel has said over
17 and over again that Ms. Lybrand had what she
18 claimed to be the original Note back in the
19 other hearing. Well, what happened is that
20 because of our discovery, and because of the
21 change in Plaintiff, and because the Plaintiff
22 finally complied with court ordered discovery,
23 the Plaintiff sent us discovery, including a
24 lost note affidavit under oath that said the
25 Note was lost. So that changed the game



1 completely as of that time, and that was 2018.

2 **THE COURT:** Yeah, I remember that.

3 **MR. BARNES:** That was four years later.

4 **THE COURT:** All right. And so, Mr. Hayes ---

5 **REPLY BY MR. HAYES:**

6 **MR. HAYES:** Your Honor, under Uniform Code,
7 Commercial Code Section 301, you can enforce it
8 even -- I could have stolen it ---

9 **THE COURT:** Right.

10 **MR. HAYES:** --- and still enforce it.

11 **MR. BARNES:** Not the issue.

12 **MR. HAYES:** And so, for them to say that they have
13 to find the true owner or the holder, I'm the
14 holder if I've stolen it, I can enforce it,
15 Your Honor.

16 **THE COURT:** Mr. Hayes, with all due respect, I think
17 that was the -- that's been the entire, that's
18 been the entire nature of the case is to find
19 who did in fact hold the Note. And, of course
20 we had the 20- -- and I'm glad you pointed out
21 the 2014 order ---

22 **MR. HAYES:** Yes, sir.

23 **THE COURT:** --- where I said Ms. Lybrand was
24 actually holding the Note, but then we have
25 this whole -- then you had some changes. You



1 had changes in, as I recall, and I can go back
2 through and look at it again, but, I mean,
3 there were some changes in who was Plaintiff.
4 And all along I think there -- the servicing of
5 the loan was -- I don't want to sound like I'm
6 prejudiced, okay, don't think I'm biased, but
7 mind you of how this servicing got ping-ponged
8 back and forth, over, above, and around, I
9 mean, there's been so many servicers in this
10 case, I don't know where to even begin to stop
11 counting. I mean, it's, it's been a lot of
12 servicers that have been involved in this case,
13 all along. And poor Defendant's trying to
14 figure out who do I pay. Just as soon as he
15 gets ready to pay, I guess, it looks like,
16 well, the servicer has changed.

17 Anyway, your points are said, and I
18 appreciate everything you say, and if you've
19 got a comment in response to that I'll be glad
20 to hear from you.

21 **REPLY BY MR. HAYES:**

22 **MR. HAYES:** Your Honor, just one. I read back -- I
23 mean, there's a lot of documents that I've been
24 going through these since Saturday, my view is
25 that, and my experience, leads me to believe



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1 that the Defendant was not trying to find the
2 true owner to pay. The Defendant could have
3 paid the servicer at any time. The Defendant,
4 in his deposition, tried to say, oh, I don't
5 know if this is a real note or not. You know,
6 and was just trying to confuse everything, Your
7 Honor, in my opinion.

8 **CONCLUDING MATTERS:**

9 **THE COURT:** Okay. Well, I mean, he gets -- he takes
10 the affidavit of somebody who is a lawyer for
11 a company who is not even designated as the
12 corporate representative for one of the par- --
13 one of the, I guess, a servicer. I mean, it's
14 Mr. Ballentini, or something like that, is his
15 name?

16 **MR. BARNES:** Ballenti, Your Honor.

17 **THE COURT:** Ballentini?

18 **MR. BARNES:** Ballenti.

19 **THE COURT:** Ballenti. And he says ---

20 **MR. BARNES:** Ballenti, right.

21 **THE COURT:** I don't know where the Note is. He
22 signed an affidavit saying it's lost. The same
23 individual then signs the affidavit of the
24 amount of the debt due. So I got him saying
25 one time it's lost, or oh no, now we've found



1 it. And so it's two different pieces of
2 testimony from him that are pretty much
3 opposite of each other. And then he's the guy
4 signing the affidavit as to the amount of the
5 debt. And so, that was a little concerning, to
6 be frank with you. And it's somewhat -- in a
7 motion for summary judgment, the credibility is
8 not an issue. I mean, it's really not an
9 issue. So I didn't raise that and then make a
10 finding of credibility in my order, but the
11 inconsistencies of Mr. Ballanti -- is that
12 correct? Ballanti?

13 **MR. BARNES:** Ballenti.

14 **THE COURT:** Anyway, it's pretty inconsistent. Do
15 you want to say something else?

16 **MR. HAYES:** Again, I just wanted to say, 2014, in
17 your order, you stated they had the original
18 Note, that they could have paid it at that
19 time.

20 **THE COURT:** All right. Okay. I don't have anything
21 else I want to comment on.

22 Do you have anything else, Mr. Barnes, you
23 want to say? I think you've covered
24 everything, but if something has come up since
25 the last argument, I'd be glad to hear from



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1 you.

2 He doesn't appear that he has anything to
3 say. So I'm going to conclude the hearing now.
4 And what I'd like for you to do is provide me
5 with a transcript of this hearing.

6 **MR. HAYES:** Yes, sir.

7 **THE COURT:** I want to -- so if you could do that for
8 me ---

9 **MR. HAYES:** Yes, sir.

10 **THE COURT:** --- before I make my decision of what
11 I'm going to do.

12 **MR. HAYES:** Yes, sir.

13 **THE COURT:** And that concludes the hearing. Thank
14 you very much, Mr. Barnes, I appreciate seeing
15 you.

16 **MR. BARNES:** Thanks, Judge. Thanks for letting me
17 appear remotely.

18 **THE COURT:** All right, yes, sir.

19 **MR. HAYES:** Thank you, Judge.

20 **(There being nothing further, the hearing concluded**
21 **at 12:28 p.m.)**

22

23

24

25



CERTIFICATE

This is to certify that the within hearing, consisting of fifty-three (53) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on March 2, 2023.



Patricia Andrews
Court Reporter

Notary Public for South Carolina
My Commission Expires: June 15, 2031



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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) C/A No. 2011-CP-18-00871

U.S. Bank Trust NA as Trustee for)
Waterfall Victoria Grantor)
Trust II, Series G,)
)
 Plaintiff,)
)
vs.)
)
Jamie Singleton And Indigo Pointe)
Homeowners' Association,)
)
 Defendants.)
-----)

HEARING

Monday, June 12, 2023
10:02 a.m. - 4:43 p.m.
Tuesday, June 13, 2023
10:08 a.m. - 4:41 p.m.
Wednesday, June 14, 2023
9:02 a.m. - 3:39 p.m.

The hearing before the Honorable James E. Chellis, Master-In-Equity for Dorchester County, was taken at the Dorchester County Courthouse, 5200 Jim Bilton Boulevard, Saint George, South Carolina on the 12th day of June, 2023 before Patricia Andrews, Court Reporter and Notary Public in and for the State of South Carolina.



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Giovanni Amaya, Witness
Candace Singleton, Observer
Pastor Oscar Butts, Observer
Janet Butts, Observer

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DAY 1 - MONDAY, JUNE 12, 2023

CALL TO ORDER:

THE COURT: All right. We're here on the matter -- in the matter of U.S. Bank Trust National -- NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G, Plaintiff, versus Jamie, J-A-M-I-E, Singleton and Indigo Pointe, P-O-I-N-T-E, Homeowners' Association, Defendants. Case Number 2011-CP-18-00871.

INTRODUCTION OF PARTIES:

THE COURT: Prior to going on the record, I went ahead and established who was present at the hearing. At this time, I'm gonna state that for the record so that it's clear who is here. On behalf of the Plaintiff, lawyers present are, Dean Smith -- excuse me, Dean Hayes. You probably wish you were Dean Smith, don't you?

MR. HAYES: I -- (laughter) ---
(Laughter.)

MR. HAYES: I -- well, not now, but back when I was growing up, yes.

THE COURT: You'd probably be living -- living it large right now, but -- anyway, Dean Hayes. I apologize, Mr. Hayes, for ---

MR. HAYES: It's all right, Your Honor.



1 **THE COURT:** --- the momentary slip. But, Dean
2 Hayes, a lawyer from Columbia. January Taylor
3 represents the Plaintiff. She is a lawyer from
4 Atlanta, but licensed in South Carolina?

5 **MS. TAYLOR:** Yes, Your Honor.

6 **THE COURT:** Correct?

7 **MS. TAYLOR:** Yes, Your Honor.

8 **THE COURT:** And Giovanni Amaya is a witness on
9 behalf of the Plaintiff. And then, also Taylor
10 Way is an associate attorney with Ms. January
11 Taylor's firm, McMichael Taylor ---

12 **MS. TAYLOR:** Gray, Your Honor.

13 **THE COURT:** --- and Gray.

14 **MS. TAYLOR:** And she is physically here in South
15 Carolina.

16 **THE COURT:** And she's licensed also?

17 **MS. TAYLOR:** And -- yes, yes, Your Honor. And she,
18 physically, is in -- lives in South Carolina,
19 so ---

20 **THE COURT:** Oh, I didn't know that. Okay. I bet
21 she enjoys it.

22 **MS. TAYLOR:** (Laughter.)

23 **THE COURT:** From the Defendant's case, we have -- or
24 team, we have Mr. Jeff Barnes, an attorney who
25 is appearing *pro hac vice*, sponsored by Bill



1 Sloan -- William Sloan, Esquire, Dorchester
2 County Bar. Also in attendance, is Mr. Sloan's
3 paralegal, perhaps, or assistant?

4 **MR. SLOAN:** Law clerk.

5 **THE COURT:** Law clerk, Ethan Hirsch, H-I-R-S-C-H.
6 Also in attendance, is the Plaintiff (sic)
7 himself, Jamie Singleton.

8 **MR. SINGLETON:** Yes, sir.

9 **THE COURT:** Good morning, Mr. Singleton.

10 **MR. SINGLETON:** Good morning, sir.

11 **THE COURT:** And present in the gallery behind Mr.
12 Singleton's camp is Mrs. Singleton, his wife,
13 Oscar Butts and his wife, Janet Butts, who are
14 attending in support of Mr. Singleton.

15 Our court reporter today is Patricia
16 Andrews. She is with Creel Court Reporting,
17 Incorporated, 1230 Richland Street, Columbia,
18 South Carolina 29202.

19 At this time, I recognize Mr. Hayes, or
20 Ms. Taylor?

21 **PLAINTIFF'S CASE IN CHIEF**

22 **MR. HAYES:** Thank you, Your Honor. Dean Hayes. May
23 it please the Court.

24 I'd like to call my first witness,
25 Giovanni Amaya.



1 **THE COURT:** All right. Mr. Amaya, come on over
2 here, the witness stand is to my left. Please,
3 sit down. Please place your left hand on the
4 Bible and raise your right hand.

5 **MR. AMAYA:** (Witness complies.)

6 **THE COURT:** Do you solemnly swear or affirm to tell
7 the truth, the whole truth, and nothing but the
8 truth, so help you God?

9 **MR. AMAYA:** I do.

10 **THE COURT:** All right. Have a seat. Answer any
11 questions from Mr. Hayes.

12 **GIOVANNI AMAYA,** being first duly sworn, testifies as
13 follows:

14 **MR. AMAYA - DIRECT EXAMINATION BY MR. HAYES:**

15 Q: Would you state your full name for the record,
16 please?

17 A: Giovanni Amaya.

18 Q: Okay. Where are you employed?

19 A: Specialized Loan Servicing.

20 Q: Okay. What is your position at Specialized
21 Loan Servicing?

22 A: Second Assistant Vice President of Default
23 Management.

24 Q: Okay. What is your educational background?

25 A: My final degree was an MBA with a concentration



1 in finance.

2 Q: Okay. So, you have an MBA in finance?

3 A: Yes.

4 Q: Okay. What are your job duties at S- -- may I
5 call Specialized Loan Servicing, SLS?

6 A: Yes, that's how we're commonly referred ---

7 Q: Okay.

8 A: --- to.

9 Q: Okay. What -- what's your position there?
10 What are your duties in that position?

11 A: That includes a review of business records on
12 loans that are in default. I am also a records
13 custodian and I will go and verify the
14 possession of original documents. I am a -- I
15 have execution authority and will execute
16 documents on -- case-by-case if there's
17 anything that needs to be signed either by SLS
18 for SLS, or by SLS for any of the investors
19 that we service for. That's the majority of
20 it, but I also communicate with counsel, pull
21 business records for counsel, and provide them
22 to counsel whenever needed on any lega- --
23 litigating matters before or after litigation
24 begins.

25 Q: Okay. How long have you worked at SLS?



- 1 A: If I remember correctly, I think it's about ten
2 years, or over ten years now.
- 3 Q: Over 10 years. What did you do prior to
4 working at SLS?
- 5 A: Directly before SLS, I was working at Bayview
6 Loan Servicing, another servicer.
- 7 Q: Do- -- does Bayview -- they service -- service
8 loans?
- 9 A: Yes.
- 10 Q: Okay. How long did you work there?
- 11 A: Over two years.
- 12 Q: Okay. How long have you been in loan
13 servicing?
- 14 A: Over 12.
- 15 Q: Okay. What is the relationship between SLS and
16 the Plaintiff in this case?
- 17 A: We're the current servicer for the Plaintiff in
18 this case.
- 19 Q: How long have you been servicing this loan at
20 issue in this case?
- 21 A: To the best of my recollection, it was sometime
22 in December of '22 that it became an SLS loan,
23 but it transferred over to SLS.
- 24 Q: Okay. And would you explain what servicing a
25 loan entails?



1 A: Yes. The things we mainly, sort of --
2 maintaining a loan, this would include
3 communication with borrowers, whether
4 telephonic, written, sending and receiving
5 letters, sending and receiving payments,
6 tracking the debits and credits applied on
7 loans, maintaining the business records or
8 original collateral files in safe locations,
9 just overall day-to-day maintenance of a loan,
10 almost like a credit card company would do to
11 -- if you had a call center, things of that
12 nature.

13 Q: Okay. Are you personally familiar with how SLS
14 maintains their loans -- or services the loans?

15 A: Yes.

16 Q: Okay. Are you personally familiar with how
17 they maintain their records?

18 A: Yes, I am.

19 Q: Okay. Are you familiar with the loan that is
20 at issue in this case today?

21 A: Yes, I have reviewed for today.

22 Q: Okay. Do you routinely review loan records and
23 business records of -- of servicers?

24 A: Yes. SLS is in anything that is incorporated
25 to our business record from prior servicers.



1 Q: Okay. So, you have a lot of -- do you have --
2 you said you've worked for 12 years in the
3 servicing industry?

4 A: Yes.

5 Q: So, during that time, you've reviewed a lot of
6 loans that were transferred to the servicer?

7 A: Yes.

8 Q: Okay. Do you ha- -- do you have any idea how
9 many loans you've reviewed in your career?

10 A: No, not off the top of my head. That's not
11 something I track.

12 Q: Okay. Do you have any idea how many business
13 records you've reviewed in your career?

14 A: That would be multiplying the previous number,
15 that I'm not aware, of by an unknown number.
16 Every loan has a different amount of types of
17 business records, sometimes one or two prior
18 servicers, sometimes just one, it -- it's a
19 significant number, but I don't know it off the
20 top of my head.

21 Q: Okay. Who was servicing the loan at issue in
22 this case before it was transferred to SLS for
23 the servicing?

24 A: For this loan, to the best of my recollection,
25 was -- Statebridge serviced the loan prior to



1 SLS.

2 Q: Okay. When -- when you received the -- the
3 records from Statebridge, what form were they
4 in, were they in computer form, paper form?

5 A: We receive multiple formats from prior
6 servicers. We will receive documented data,
7 digital information, imaged information. So,
8 some of the documents are digital images, some
9 of the documents are just the data information
10 from their system that's not actually -- that
11 can be printed out, maybe in an Excel format,
12 but it's not something that is an image like
13 you would normally see, it's the zeros and ones
14 from the data from the servicing platforms.
15 And we also receive original documents through
16 our custodians, so there's also physical
17 documents that will be received.

18 **THE COURT:** Mr. Hayes, I'm gonna strike the answer,
19 because it wasn't responsive to your question.
20 You asked him about this specific loan.

21 **MR. HAYES:** Okay. I'm going to get further into it,
22 Your Honor. Okay. Okay -- (laughter).

23 **THE COURT:** The answer's struck.

24 **MR. HAYES:** I -- I understand.

25 **THE COURT:** He needs to underst- -- I don't



1 understand what he said about this loan. He
2 said -- he went and talked about different
3 loans.

4 **MR. HAYES:** Yes, sir. I understand. All right.
5 Thank you, Your Honor.

6 **Q:** For this particular loan, I think you said it
7 was serviced by Statebridge. Did Statebridge
8 send over the records for this particular loan
9 at issue in this case?

10 **A:** Yes.

11 **Q:** Okay. So, SLS received the records -- business
12 records from Statebridge for this particular
13 loan at issue in this case?

14 **OBJECTION:**

15 **MR. SLOAN:** Objection. Leading.

16 **MR. BARNES:** You beat me to it.

17 **THE COURT:** Sustained.

18 **Q:** Did -- did you receive any records from
19 Statebridge on -- regarding this specific loan?

20 **A:** Yes.

21 **Q:** Okay. Were those transferred to SLS from
22 Statebridge?

23 **A:** Yes.

24 **Q:** Okay. Did you review those records?

25 **A:** Yes.



1 Q: Did those records appear to be complete?

2 A: Yes.

3 Q: Okay. Did you incorporate those records into
4 -- the records from Statebridge, did you
5 incorporate those records into SLS's records?

6 A: Yes, we did.

7 Q: Okay. When SLS is servicing a loan, do they
8 rely on their records, the business records,
9 the payment history, things of that nature?

10 A: Yes, we do.

11 Q: Okay. So, when you incorporate Statebridge's
12 records into SLS's records, you're relying on
13 those records?

14 A: Yes.

15 Q: Okay. Did -- I may have asked this before, did
16 you review the records at issue in this
17 particular case for this particular loan?

18 A: Yes ---

19 **OBJECTION:**

20 **MR. BARNES:** Object to the form, Your Honor.

21 **THE COURT:** Overruled. Go ahead.

22 Q: Okay. Did -- when you received the records
23 from Statebridge, did you review -- for this
24 particular loan, did you review those records?

25 A: Yes. I reviewed the records in my systems for



1 this loan prior to today.

2 Q: Okay.

3 **THE COURT:** Okay, wait a minute. That's not what he
4 asked you. He asked you when this loan was
5 transferred to -- from B- -- from SBS to SLS,
6 did you review these records at that time.

7 A: At the time of transfer?

8 **THE COURT:** Yes, sir.

9 A: SLS did, Your Honor. I personally did not ---

10 **THE COURT:** Okay.

11 A: --- on that date.

12 **THE COURT:** Thank you. I think that may have been
13 your objection. I'm not sure, but ---

14 **MR. HAYES:** Okay.

15 **THE COURT:** --- that ---

16 **MR. HAYES:** Okay.

17 **MR. BARNES:** I didn't want to do a speaking
18 objection, Your Honor.

19 **THE COURT:** I understand. Okay.

20 Q: Does SLS have a servicing platform?

21 A: Yes.

22 Q: Okay. What is it called?

23 A: Our standard servicing platform is called
24 Sagent, previously known as Fiserv. We also
25 use an imaging platform that is a part for --



1 of the servicing process that goes by a
2 different name. And we have an additional
3 platform that we use for servicing when
4 transferring documents to counsel, it helps
5 track loans that are in default and to provide
6 documents in a secure manner.

7 Q: Okay. Do you personally have access to that
8 platform?

9 A: Yes, I have access to all three platforms.

10 Q: Okay. Were you provided training in all three
11 platforms?

12 A: Yes.

13 Q: Okay. Can you describe that training?

14 A: The initial training began when I started with
15 SLS. It was standard HR training, which
16 included giving me passwords and access to the
17 systems, as they were secured systems. From
18 there, I had what I would consider to be the
19 basic training by the HR on how to access the
20 systems and how to pro- -- how to use them in
21 general format. Af- -- continuing, after that,
22 in my department I had -- once I was moved to
23 my department, I had additional training more
24 specific to my job tasks and duties to ensure
25 that I knew how to access the records, how to



1 pull the records and read the records from the
2 systems, and there's also continuing education
3 on those systems with any -- providing us any
4 updates, if there's any updates on the systems.

5 Q: Okay. When payments are made on an account,
6 what's the process for entering the payments
7 into the system?

8 A: When payments are received, they are posted
9 into the payment history of the loan. Once the
10 payment is processed, that would be updated
11 correctly depending on whether the payment
12 cleared or not on the loan.

13 Q: Okay. Have any payments been made on the loan
14 at issue in this case since SLS began servicing
15 it?

16 A: No. Not that I'm ---

17 Q: Okay.

18 A: --- aware of.

19 Q: Can you -- are the records maintained by SLS,
20 are they prepared near the time of the event?
21 If -- if a payment is made, is it entered into
22 the system immediately or soon thereafter?

23 A: It is immediately -- once we receive payments
24 and we have it, we post it in the system, and
25 then it's updated once the check is processed.



1 Q: Okay. Is the -- the -- are the records
2 maintained in the regular course of business --
3 -

4 A: Yes.

5 Q: --- for SLS?

6 A: Yes, they are.

7 Q: Are the records prepared by someone with -- or
8 from information transmitted by a person with
9 knowledge?

10 **OBJECTION:**

11 **MR. BARNES:** Objection to foundation.

12 **THE COURT:** Sustained.

13 Q: When -- who enters information into the system
14 at SLS?

15 A: It would be the individual who has the
16 information on that specific transaction.

17 Q: Okay.

18 A: So, it's someone who has an understanding or
19 the knowledge of what's being entered. It
20 would be someone in cashiering who receives
21 payments and/or a check and posts that into
22 cashiering. If there's a collection comment,
23 it would be the specific individual who took
24 the phone call or had the experience that
25 needed to be commented on a loan.



1 Q: Okay. And you're personally familiar with how
2 SLS maintains its business records, correct?

3 A: Yes.

4 Q: Okay. So, the records that -- any -- any entry
5 into the records is made by the person with
6 knowledge of the entry, correct?

7 **OBJECTION:**

8 **MR. SLOAN:** Objection ---

9 **MR. BARNES:** Objection.

10 **MR. SLOAN:** --- leading.

11 **THE COURT:** Sustained. Mr. Hayes, please avoid
12 leading questions.

13 **MR. HAYES:** Okay.

14 Q: All right. Who enters entries into the -- the
15 system at SLS?

16 A: Someone who has knowledge of the transaction
17 that needed to be entered into the system.
18 Each entry is done by the person who is
19 involved with that transaction or the person
20 who partook in the activity that needed to be
21 commented or put into the system for the loan.
22 Someone with knowledge of it.

23 Q: Okay. Thank you. In connection with the --
24 the trial on this case, have you reviewed the
25 records of the account at issue in this case,



1 personally?

2 A: Yes.

3 Q: Okay. Have you testified at a trial before?

4 A: Yes.

5 Q: Okay. How many times?

6 A: I don't have that number off the top of my
7 head.

8 Q: Okay.

9 **MR. SLOAN:** Oh, wait a minute. Can I see it?

10 **MR. BARNES:** Is that just the mortgage?

11 **MR. HAYES:** Yeah.

12 **MR. BARNES:** Okay. Oh, thanks.

13 **MR. HAYES:** Uh-huh.

14 **MS. TAYLOR:** May I approach the witness, Your Honor?

15 **MR. HAYES:** There's this thing hanging out the --
16 the cor- -- coming out here ---

17 **MR. BARNES:** Your Honor, Mr. Hayes handed me a
18 document that consists of 22 pages. It is
19 styled mortgage and date. But it's all legal-
20 sized paper except for the last page, which is
21 Exhibit A, which is a legal description, just
22 for the record.

23 **THE COURT:** All right.

24 **(Plaintiff's Exhibit Number 1 was marked for**
25 **identification purposes).**



- 1 Q: Mr. Amaya, I'm handing you what's been marked
2 as Plaintiff's Exhibit Number 1. Would you
3 identify that document?
- 4 A: Yes. It's the original mortgage for the loan
5 in question.
- 6 Q: Okay. What is the date of the mortgage?
- 7 A: It is dated January 4, 2006.
- 8 Q: Okay. Is there a lender listed on the
9 mortgage?
- 10 A: Let me see. (Reviews document.) Yes.
- 11 Q: Who's the lender?
- 12 A: People's Choice Home Loans, Inc.
- 13 Q: Okay. Is there -- who is the borrower on the
14 mortgage?
- 15 A: Jamie Singleton.
- 16 Q: Okay. Is there -- is the mortgage signed?
- 17 A: Yes.
- 18 Q: Okay. Is there a principal amount on the
19 mortgage, as far as how much it secures?
- 20 A: Yes, there is.
- 21 Q: Okay. How much is listed?
- 22 A: \$212,000.
- 23 Q: Okay. Is there a loan number on the mortgage?
- 24 A: I do see a MIN loa- -- number.
- 25 Q: Okay.



1 **THE COURT:** What is a MIN number?

2 A: It's similar to a loan number, Your Honor. But
3 it's not a loan number, it's the Mortgage and
4 Industry Number, I believe is the abbreviation
5 that it is.

6 **THE COURT:** So it's M-I-N-I is what you're saying?

7 A: M-I-N.

8 **THE COURT:** M-I-N?

9 A: Yes, Your Honor.

10 **THE COURT:** A MIN number?

11 A: Yes.

12 **THE COURT:** What does MIN stand for?

13 A: I don't recall, Your Honor.

14 **THE COURT:** Where is it on this form that you're
15 talking about?

16 A: First page, right under the word mortgage, Your
17 Honor.

18 **THE COURT:** Oh, M-I-N. I gotcha. I see it. And
19 what did you say -- what is this? Is it
20 similar to a loan number type ---

21 A: Yes, Your Honor.

22 **THE COURT:** Is it a tracking number?

23 A: Yes. It's a kind of tracking number, Your
24 Honor.

25 **THE COURT:** Go ahead, Mr. Hayes.



1 Q: Is the mortgage -- does Exhibit 1 appear to be
2 recorded?

3 A: Yes.

4 Q: Okay. Is there a date of recording?

5 A: Yes, it shows January 12, 2006.

6 Q: Where's it recorded or where does it appear to
7 be recorded?

8 A: Dorchester County, South Carolina.

9 Q: Okay. Does -- is there any recording
10 information on the document as far as a book
11 and page number?

12 A: There is a stamp that appears to be the book
13 number and -- yes, and page number.

14 Q: Okay. Did -- would you tell the Court what the
15 book and page number is?

16 A: Book 5142, page 168 ---

17 Q: Okay.

18 A: --- through ---

19 **MR. HAYES:** Your Honor, I move that Exhibit ---

20 **THE COURT:** Well, he's not finished with his answer.

21 **MR. HAYES:** I'm sorry.

22 A: Through page 188. Each page has its own page
23 number.

24 Q: I apologize for interrupting.

25 **MR. HAYES:** Your Honor, I move that Plaintiff's



1 Exhibit Number 1 be moved into evidence.
2 (Plaintiff's Exhibit Number 1 was offered into
3 evidence.)
4 MR. BARNES: No objection to the mortgage.
5 THE COURT: So, you're moving in Exhibit ---
6 MR. HAYES: 1.
7 THE COURT: --- 1. He just identified as being Book
8 5142 through -- page 168 through 188. Is that
9 all you want to move in?
10 MR. HAYES: What ---
11 MR. SLOAN: I missed a page.
12 MR. HAYES: Oh, and -- and the legal description.
13 Where -- where is the -- is legal description
14 on here?
15 MR. BARNES: That was the 22nd page.
16 MR. HAYES: Yeah, the legal description's on there,
17 Exhibit A.
18 Q: Does the legal description on this document --
19 what is it -- does it identify a lot?
20 A: Yes.
21 Q: Okay. Would you read the -- the legal
22 description?
23 A: Lot 69. On a plat of Indigo Pointe at Indigo
24 Fields Subdivision, Phase V-A, located in the
25 City of North Charleston, Dorchester County,



1 South Carolina.

2 Q: Okay. Thank you. Does it give the -- the
3 recording information for the plat book and
4 page number for Lot 69?

5 A: The document itself does have the book and page
6 number for the recording of the mortgage. And,
7 yes, it does mention a plat book and page
8 number, plat book J, page 128.

9 Q: Okay. The ---

10 **THE COURT:** So, what -- what about this document?
11 What do you want to do?

12 **MR. HAYES:** I'm sorry?

13 **THE COURT:** What are you doing with this document?
14 We've identified it, now what do you do?

15 **MR. HAYES:** I -- I moved that it be admitted into
16 evidence, Your Honor.

17 **THE COURT:** Any objection?

18 **MR. SLOAN:** Not to the mortgage, Your Honor.

19 **MR. BARNES:** Well, this is separate. This is the
20 legal description, which is page 22, I
21 understand.

22 **THE COURT:** Right.

23 **MR. BARNES:** That's the specific question, at this
24 point.

25 **THE COURT:** Well, my -- my question was whether he



1 was only moving in pages 128 -- 168 through
2 188, at page -- at Book 5142, or was he -- was
3 it intended that he include 189?

4 **MR. HAYES:** I apologize, Your Honor. I intended to
5 include 189.

6 **THE COURT:** All right. So, is there any objection
7 to ---

8 **MR. BARNES:** No, Your Honor.

9 **THE COURT:** Okay. This Exhibit Number 1 is admitted
10 into evidence.

11 **(Plaintiff's Exhibit Number 1 was admitted into**
12 **evidence.)**

13 **MS. TAYLOR:** May I, Your Honor, approach?

14 **THE COURT:** Sure. Come on up.

15 **MS. TAYLOR:** Sorry.

16 **THE COURT:** You don't have to ask every time ---

17 **MS. TAYLOR:** Oh, okay.

18 **THE COURT:** --- if you want to just come on up.

19 **MS. TAYLOR:** Thank you, Your Honor.

20 **Q:** Mr. Amaya ---

21 **MR. BARNES:** Your Honor, Mr. Hayes has handed me a
22 stack of ten documents that are stapled
23 together that have different titles on them.

24 **THE COURT:** Yes, sir.

25 **MR. BARNES:** One of them is styled, Adjustable Rate



1 Note, which is the first four pages.

2 **THE COURT:** Yes, sir.

3 **MR. BARNES:** The -- one of the -- the next document
4 in this series is a document styled, Allonge To
5 Note, which is, itself, is undated other than
6 the date of the note.

7 **THE COURT:** I don't see it in -- I see a -- you -- I
8 see an endorsement is the se- -- is the fifth
9 page.

10 **MR. BARNES:** On the document that Mr. Hayes handed
11 me, there's a stamp on the back of the last
12 page of what is called Note. So, that might've
13 been put on a separate ---

14 **THE COURT:** The back of the Note?

15 **MR. BARNES:** It's the back of the document that's
16 styled, Adjustable Rate Note.

17 **THE COURT:** Okay. Mine is -- all right. And what I
18 received it's a separate page, I'm sorry.

19 **MR. BARNES:** Okay.

20 **MS. TAYLOR:** Yes, Your Honor. That was -- and, I
21 apologize. I was making copies, I think we
22 just made sure we got the back.

23 **THE COURT:** Okay. Thank you.

24 **MR. HAYES:** I was just giving you advanced notice of
25 that.



1 **MR. BARNES:** So, the next -- as I was saying, the
2 next document -- the first page stapled after
3 the document styled -- the legal size document
4 that's styled, Adjustable Rate Note, is
5 something called an Allonge to Note.

6 **THE COURT:** Yes, sir.

7 **MR. BARNES:** Which itself is undated, other than the
8 date of the note, whereby, there is an
9 indication, pay to the order of the number 50,
10 the word by, B-Y, and then the word -- the
11 number 50 again, capital letters R-E-O, LLC, by
12 GMAC, all capitals, no spaces, no periods, no
13 underline, Mortgage, LLC.

14 The second document in that series is also
15 styled, Allonge to Note, which itself is
16 undated other than the date of the note,
17 whereby, 50 by 50 REO, LLC states, pay to the
18 order of -- this is in handwriting, U.S. Bank
19 NA as Trustee of the FRT, that's capital Frank-
20 Roger-Tom, 2011-1 Trust.

21 The third document is also styled, Allonge
22 to Note, which itself is -- bears a date of
23 September 4th of 2014, does not have a loan
24 number. And by this one, FRT 2011-1 Trust is
25 the -- someone from that company is the



1 reported signer, pay to the order of FRT 2013-1
2 Investor, LLC.

3 The next document is also styled, Allonge
4 to Note, which is also dated September 4th of
5 2014, which states, pay to the order of, blank,
6 without recourse, by FRT 2013-1 Investor LLC.

7 The next document is a document styled,
8 Note Allonge, which states, pay to the order of
9 Waterfall Victoria Grantor Trust II, Series G,
10 as in George, by Wilmington Savings Fund
11 Society, FSB d/b/a Christiana Trust not in its
12 individual capacity, but solely in the capacity
13 as Certificate Trustee for NNPL, Nancy-Nancy-
14 Peter-Larry, Trust -- and again, no periods, no
15 caps, no underlining, Trust Series 2012-1.

16 And the last document in this series is
17 something called Allonge to Note, which itself
18 bears no date whatsoever, but it says, pay to
19 the order of WestVue, W-E-S-T, Capital V-U-E,
20 but one word, NPL, Nancy-Peter-Larry, Trust II,
21 by Wilmington Savings Fund Society, FSB d/b/a
22 Christiana Trust not in its individual
23 capacity, but solely in the capacity as
24 certificate trustee for NNPL Trust Series 2012-
25 34. That's what's been handed to me, Your



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Honor.

THE COURT: Yes, sir. Okay. Thank you.

MR. BARNES: You're welcome.

Q: Would you -- as far as Plaintiff's Exhibit Number 1, would you read from page two, section E?

A: Yes. Page two, section E, Note means the promissory note signed by Borrower and dated January 4, 2006. The note states the Borrower owes Lender \$212,000 plus interest. Borrower has promised to pay this debt in regular periodic payments and to pay the debt in full no later than February 1 of 2036.

Q: Okay. Would you read page -- oh, excuse me, first page listed as A?

A: Yes. First page, A, Security Instrument, means this document which is dated January 4, 2006, together with all riders to this document.

Q: Okay. Section B, please.

A: Section B is, Borrower is Jamie Singleton. Borrower is the mortgager under the security instrument.

Q: Okay. Would you read section C, please?

A: Yes. Section C, MERS, M-E-R-S, is Mortgage Electronic Registration System, Inc. MERS is a



- 1 separate corporation that is acting solely as
2 a nominee for Lender and Lender's successors
3 and assigns. MERS is the mortgagee under this
4 security instrument. MERS is organized and
5 existing under the law of Delaware and has an
6 address and telephone number of P.O. Box 2026,
7 Flint, MI 48501-2026, abbreviation for
8 telephone, 888-679-MERS.
- 9 Q: And I forget, did I -- did I ask you to read
10 section D?
- 11 A: You did.
- 12 Q: Okay. So, the -- the lender is listed as
13 People's Choice Home Loan, Inc.?
- 14 A: Yes, that is correct. In section D, lender is
15 People's Choice Home Loan, Inc.
- 16 Q: Okay. Would you read section F, please?
- 17 A: F, property means the property that is
18 described below under the heading Transfers of
19 Rights in the Property.
- 20 Q: Okay. And section G, please.
- 21 A: G, Loan means the debt evidenced by the note
22 plus interest, any payment charges and late
23 charges due under the note, and all sums due
24 under this security instrument plus interest.
- 25 Q: Okay. Section H -- H, please.



1 A: H, Riders, means all riders to this security
2 instrument that are executed by borrower, the
3 following riders are to be executed by
4 Borrower. Check boxes as applicable. There
5 are two Xs, one next to Adjustable Rate Rider,
6 and one next to Planned Unit Development Rider.

7 Q: Okay. Thank you. Section I, please.

8 A: Section I, Applicable Law means all controlling
9 applicable federal, state and local statutes,
10 regulations, ordinances, and administrative
11 role -- rules, and others that have the effect
12 of law, as well as all applicable final, non-
13 appealable judicial opinions.

14 Q: Okay. Section L, please.

15 A: L, Escrow Items means those items that are
16 described in section three.

17 Q: Section M, please.

18 A: M, as in Mike, or N as ---

19 Q: Yeah, yeah, M as in Michael. I'm sorry.

20 A: M, Miscellaneous Proceeds means any
21 compensation, settlement, award of damages, or
22 proceeds paid by any third party, other than
23 the insurance proceeds paid under the coverage
24 described in section five, for (I) damage to or
25 destruction of the property; (II) condemnation



1 or other taking of all or any part of the
2 property; (III) conveyance in lieu of
3 condemnation; or (IV) misrepresentations of or
4 omissions as to the value and/or condition of
5 the property.

6 Q: Okay. Would you read section O, please?

7 A: Section O, Periodic Payment means the regularly
8 scheduled amount due for (I) principal and
9 interest under the note plus; (II) any amounts
10 under section three of this security
11 instrument.

12 Q: Okay. Would you read the part under section Q
13 entitled, Transfer of Rights in the Property?

14 A: Okay. In section Q, under Transfer of Rights
15 in the Property, this security instrument
16 secures to Lender (I) the repayment of the loan
17 and all renewals, extensions and modifications
18 of the note; and (II) the performance of
19 Borrower's covenants and agreements under the
20 security instrument and the note. For this
21 purpose, Borrower does hereby mortgage, grant
22 and convey to MERS, solely as nominee for
23 Lender and Lender's successors and assigns, and
24 to the successors and assigns of MERS the
25 following described property located in the



1 County of Dorchester. The legal description
2 attached hereto and more -- no, sorry, and made
3 a part hereof as Exhibit A.

4 Q: Is there an Exhibit A attached to the mortgage?

5 A: Yes.

6 Q: Okay. Would you give the book and page number
7 of Exhibit A to the mortgage?

8 A: There are two book and page numbers, one that
9 correlates with the mortgage being recorded and
10 one that correlates to the property. Which one
11 are you asking?

12 Q: I'm asking if -- if the legal description
13 attached as Exhibit A, does it have a book and
14 page number on it?

15 A: Yes. It mentions that the legal description
16 was recorded in Plat Book J, page 128.

17 Q: Oh, but is there a book and page number on
18 Exhibit A?

19 A: Yes.

20 Q: Okay.

21 A: That -- it ---

22 Q: I'm -- Oh, I'm sorry. I should've said is
23 there a book and page number stamped on Exhibit
24 A?

25 A: Yes. It is Book 514-2, page 189.



- 1 Q: Would -- would you say that number again,
2 please?
- 3 A: Book 5142, page 189.
- 4 Q: Okay, thank you. Does it give the parcel --
5 does the -- is there a parcel number listed on
6 the mortgage under transfer of rights in the
7 property?
- 8 A: Yes, there is.
- 9 Q: Okay. Would you read the parcel number,
10 please?
- 11 A: Yes. Next to Parcel ID Number, 181-10-06-037.
- 12 Q: Okay. Is there a property address under the
13 parcel number?
- 14 A: Yes. Next to Parcel ID Number it says, which
15 current has -- which currently has the address
16 of and under that is -- under the Parcel ID is,
17 5505 Rowsham Place, North Charleston.
- 18 Q: Would you -- would you spell out Rowsham --
19 well, the word Rowsham?
- 20 A: Yes. R-O-W-S-H-A-M.
- 21 Q: Okay. Is there a zip code to 505 -- excuse me,
22 5505 Rowsham Place in North Charleston?
- 23 A: Yes. 29418.
- 24 Q: Okay. And I apologize for having to ask you to
25 do it, but would you read the next paragraph,



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please?

A: Yes. To have and to hold this property unto MERS, solely as nominee for Lender and Lender's successors and assigns, and to the successors and assigns of MERS forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, I'm sorry if I'm pronouncing that wrong, and fixtures, now or hereafter a part of the property. All replacements and additions shall also be covered by this security instrument, all of the foregoing is referred to in this security instrument as the property. Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this security instrument, but if necessary to comply with law or custom, MERS, as nominee for Lender and Lender's successors and assigns, has the right to exercise any or all of those interests, including but not limited to, the right of foreclosure and sell the property, and to take any action required of Lender, including but not limited to, releasing and canceling this security instrument.



1 Q: Okay. Would you turn to the next page and read
2 paragraph one until I stop you, please?
3 A: Yes. Paragraph one, Payment of Principal,
4 Interest, Escrow Items, Prepayment Charges and
5 Late Charges. Borrower shall pay when due in
6 principal of and interest on the debt evidenced
7 by the note and any prepayment charges and late
8 charges due under the note. Borrower shall
9 also pay funds for escrow items pursuant to
10 Section (3). Payments due under the note and
11 this security instrument shall be made in U.S.
12 currency, however, if any check or other
13 instrument received by Lender as payment under
14 the note or this security instrument is
15 returned to Lender unpaid, Lender may require
16 that any or all subsequent payments due under
17 the note and this security instrument be made
18 in one or more of the following forms, as
19 selected by Lender: (A) cash; (B) money order;
20 (C) certified check, bank check, treasurer's
21 check, or cashier's check, provided any such
22 check is drawn upon an institution whose
23 deposits are insured by a federal agency,
24 instrumentally, or entity; or (D) electronic
25 funds transfer.



1 Q: Okay. Would you read the first sentence of the
2 next paragraph, please?

3 A: Yes. Payments are deemed received by Lender
4 when received at the location designated in the
5 note or at such other location as may be
6 determined by Lender in accordance with the
7 notice provisions in section 15.

8 Q: Okay. And would you read the -- the first
9 paragraph of 2, please?

10 A: Yes. 2, Application of Payments or Proceeds.
11 Except as otherwise described in this Section
12 2, all payments accepted and applied by Lender
13 shall be applied in the following order of
14 priority: (A) interest due under the note; (B)
15 principal due under the note; (C) amounts due
16 under Section 3. Such payments shall be
17 applied to each periodic payment in the order
18 in which it becomes due. Any remaining amounts
19 shall be applied first to late charges, second
20 to any other amounts due under this security
21 instrument, and then to reduce the principal
22 balance of the note.

23 Q: Okay. Would you skip paragraph two and read
24 the -- that third paragraph that's only one
25 sentence, please?



1 A: Yes. Any application of payments, insurance
2 proceeds, or miscellaneous proceeds to
3 principal due under the note, shall not extend
4 or postpone the due date or change the amount
5 of the periodic payments.

6 Q: Okay. Would you read paragraph three, please,
7 until -- I may stop you -- would you read
8 paragraph three, please?

9 A: Yes. Three, Funds for Escrow Items. Borrower
10 shall pay to Lender on the day periodic
11 payments are due under the note until the note
12 is paid in full, a sum, the funds, to provide
13 for payment of amounts due for: (A) taxes and
14 assessments and other items which can attain
15 priority over the security instrument as a lien
16 or encumbrance on the property; (B) leasehold
17 payments or ground rents on the property, if
18 any; (C) premiums for any and all insurance
19 required by law -- pardon me, by Lender under
20 Section (5); and (D) mortgage insurance
21 premiums, if any, or any sums payable by
22 Borrower to Lender in lieu of the payment of
23 mortgage insurance premiums in accordance with
24 the provisions of Section 10.

25 Q: That's good enough; thank you. Would you go to



1 paragraph five, please?

2 A: Yes.

3 Q: And would you read paragraph five until I stop
4 you, please?

5 A: Yeah. Five, Property Insurance. Borrower
6 shall keep the improvements now existing or
7 hereafter directed on the property insured
8 against loss by fire, hazards included within
9 the terms extended coverage, and any other
10 hazards, including, but not limited to,
11 earthquakes and floods, for which Lender
12 requires insurance. This insurance shall be
13 maintained in the amounts, including deductible
14 levels, and for the periods that Lender
15 requires. What Lender requires pursuant to the
16 preceding censuses can change during the terms
17 of the loan. The insurance carrier providing
18 the insurance shall be chosen by Borrower
19 subject to Lender's right to disapprove
20 Borrower's choice, which right shall not be
21 exercised unreasonably.

22 Q: Sto- -- (coughing) -- excuse me. Stop, please.
23 Would you skip down to the second paragraph and
24 read until I stop and -- excuse me, the next
25 paragraph, and read until I stop you, please?



1 A: Yes. If Borrower fails to maintain any of the
2 coverages described above, Lender may obtain
3 insurance coverage at Lender's option and
4 Borrower's expense. Lender is under no
5 obligation to purchase any particular type or
6 amount of coverage. Therefore, such coverage
7 shall cover Lender, but might or might not
8 protect Borrower -- Borrower's equity in the
9 property or the contents of the property
10 against any risk, hazard or liability, and
11 might provide greater or lesser coverage than
12 was previously in effect. Borrower
13 acknowledges that the cost of insurance
14 coverage so obtained might significantly exceed
15 the cost of the insurance that Borrower could
16 have obtained. Any amounts disbursed by Lender
17 under this Section (5) shall become additional
18 debt of Borrower secured by this security
19 instrument. These amounts shall bear interest
20 at the note rate from the date of disbursement
21 and shall be payable with such interest upon
22 notice from Lender to Borrower requesting
23 payment.

24 That's the whole paragraph. Do you want
25 me to ---



1 Q: Okay. Thank you.

2 **MR. HAYES:** Beg the Court's indulgence.

3 Q: Would you go to paragraph 14, please?

4 A: Yes.

5 Q: And read until I -- just read that whole first
6 paragraph, please.

7 A: 14, Loan Charges. Lender may charge Borrower
8 fees for services performed in connection with
9 Borrower's default for the purpose of
10 protecting Lender's interest in the property
11 and rights under this security instrument,
12 including but not limited to, attorney's fees,
13 property inspection, and valuation fees. In
14 regards to any other fees, the absence of
15 expressed authority in this section in this
16 security instrument to charge a specific fee to
17 Borrower shall not be constructed as a
18 prohibition on the charges of such fee. Lender
19 may not charge fees that are expressly
20 prohibited by this section -- my apologies, by
21 this security instrument, or by the applicable
22 law.

23 Q: Okay. Would you skip down to -- would you skip
24 down to paragraph 15, please, and read until I
25 stop you there, please?



1 A: Yes. 15, Notices. All notices given by
2 Borrower or Lender in connection with this
3 security instrument must be in writing. Any
4 notice to Borrower in connection with this
5 security instrument shall be deemed to have
6 been given to Borrower when mailed by First
7 Class Mail or when actually delivered to
8 Borrower's notice address if sent by other
9 means. Notice to any one Borrower shall
10 constitute notice to all Borrowers unless
11 applicable law expressly requires otherwise.
12 The notice address shall be the property
13 address unless Borrower has designated a
14 substitute notice address by notice to Lender.
15 Borrower shall promptly notify Lender of
16 Borrower's change of address. If Lender
17 specifies a procedure for reporting Borrower's
18 change of address, then Borrower shall only
19 report a change of address through that
20 specific procedure. There may be only one
21 designated notice address under the security
22 instrument at any one time. Any notice to
23 Lender shall be given by delivering it to --
24 sorry, delivering it or by mailing it by First
25 Class Mail to Lender's address stated herein



1 unless Lender has designated another address by
2 notice to Borrower. Any notice in connection
3 with this section -- this security instrument
4 shall not be deemed to have been given to
5 Lender until actually received by Lender.

6 Q: Okay, stop. That's good enough. If you would
7 read the -- go to paragraph 16, and just read
8 the first sentence.

9 A: 16, Governing Law. Severability, Rules and
10 Construction. This security instrument shall
11 be governed by federal law and the law of the
12 jurisdiction in which the property is located.

13 Q: Would you go to paragraph 18, please, and read
14 until I stop you, please?

15 A: 18, Transfer of the Property or a Beneficial
16 Interest in Borrower. As used in this Section
17 18, interest in the property means any legal or
18 beneficial interest in the property, including,
19 but not limited to, those beneficial interests
20 transferred in a bond or deed, contract for
21 deed, installment sales contract, or escrow
22 agreement. The interest -- sorry, the intent
23 of which is a transfer of title by Borrower at
24 a future date to a purchaser. If any -- or if
25 any part of the property or any interest in the



1 property is sold or transferred, or if Borrower
2 is not natural person and a bene- -- beneficial
3 interest in Borrower is sold or transferred
4 without Lender's prior written consent, Lender
5 may require immediate payment in full of all
6 sums secured by this security instrument.
7 However, this option shall not be exercised by
8 Lender if such exercise is prohibited by
9 applicable law.

10 Q: Stop, please. And go to paragraph 20 and read
11 that until I stop you, please.

12 A: 20; Sale of Note, Change of Loan Servicer,
13 Notice of Grievance. The note or a partial
14 interest in the note, together with this
15 security instrument, can be sold one or more
16 times without prior notice to Borrower. A sale
17 might result in a change in the entity, known
18 as the loan servicer that collects periodic
19 payments due under the note and this security
20 instrument and performs other mortgage loan
21 servicing obligations under the note, this
22 security instrument, and applicable law. There
23 also might be one or more changes of the loan
24 servicer unrelated to a sale of the note. If
25 there is a change of the loan servicer,



1 Borrower will be given written notice of the
2 change which will state the name and address of
3 the new servicer -- new loan servicer, the
4 address to which payments should be made, and
5 any other information RESPA requires in
6 connection with a notice to transfer of
7 servicing. If the note is sold and thereafter
8 the loan is serviced by a loan servicer other
9 than the pur- -- purchaser of the note, the
10 mortgage loan servicing obligations to Borrower
11 will remain with the loan servicer or be
12 transferred to a successor loan servicer and
13 are not assumed by the note purchaser unless
14 otherwise provided by the note purchaser.

15 Do you want me to continue?

16 Q: If you would continue through the top of page
17 12, please, and ---

18 A: Neither Borrower nor Lender may commence, join,
19 or be joined to any ---

20 Q: Oh, I'm sorry. I -- I apologize. You had --
21 you had gone to ---

22 A: Yes, I did ---

23 Q: --- that last part of it, too. I apologize.

24 Would you go to the next page and read
25 paragraph 22, please?



1 A: 22, Acceleration Remedies. Lender shall give
2 notice to Borrower prior to acceleration
3 following Borrower's breach of any covenant or
4 agreement in this security instrument, but not
5 prior to acceleration under Section 18 unless
6 applicable law provides otherwise. The notice
7 shall be -- the notice shall specify (A) a
8 default; (B) the action required to cure the
9 default; (C) a date not less than 30 days from
10 date the notice is given by -- to Borrower by
11 which the default must be cured; and (D) that
12 failure to cure the default on or before the
13 date specified in the notice may result in
14 acce- -- in acceleration of the sums secured by
15 this instrument -- by this security instrument,
16 foreclosure by judicial proceeding and sale of
17 the property. The notice shall further inform
18 Borrower of the right to reinstate after
19 acceleration and the right to assert in the
20 foreclosure proceedings the non-existence of a
21 default or any other defense of Borrower to
22 acceleration and foreclosure. If the default
23 is not cured on or before the date specified in
24 the notice, Lender and its option may require
25 immediate payment in full of all sums secured



1 by the security instrument without further
2 demand and may foreclose this security
3 instrument by judicial proceedings. Lender
4 shall be entitled to collect all expenses
5 incurred in pursuing the remedies provided in
6 this Section 22, including but not limited to,
7 reasonable attorneys' fees and costs of title
8 evidence, all of which shall be additional sums
9 secured by this security instrument.

10 Q: Would you go to the next page, page 14, and
11 read that sentence, please?

12 A: First sentence. By signing below, Borrower
13 accepts and agrees to the terms and covenants
14 contained in this security instrument and in
15 any rider executed by Borrower and recorded
16 with it.

17 Q: And is the mortgage signed?

18 A: Yes.

19 Q: By -- who is it signed by?

20 A: There is a signature above the name Jamie
21 Singleton.

22 Q: Okay. Thank you.

23 **MR. BARNES:** Your Honor, Mr. Hayes just handed me --
24 one, two, three, four -- five sets of stapled
25 documents. I'm not sure if he intends to



1 introduce these as a composite exhibit or
2 individually, but I'm going to identify them
3 for the record.

4 The first is a two-page document with a
5 cover page from the Register of Deeds of
6 Dorchester County, South Carolina. The second
7 document is styled Assignment of Mortgage dated
8 July 14th, 2008, Book 6727, page 331, by which
9 MERS, as the nominee for People's Choice Home
10 Loan, sets over and assigns to GMAC Mortgage,
11 LLC a certain Mortgage together with the note.
12 The second document has a cover page from the
13 Register of Deeds, the -- I'm sorry, the second
14 set starts with the cover page from the
15 Register of Deeds. Attached is an assignment
16 of mortgage, Book 8010, page 231, by which GMAC
17 Mortgage, LLC sets over and transfers to that
18 50 by 50 REO, LLC entity, Mortgage, but does
19 not mention the note. The third stapled set
20 contains a cover page from the Register of
21 Deeds attaching the Assignment of Mortgage,
22 Book 8433, page 136, by which U.S. Bank NA as
23 Trustee of FRT 2011-1 Trust. care of AMS
24 Servicing, sets over -- I'm sorry, 50 by 50
25 REO, LLC sets over and transfers to U.S. Bank,



1 etcetera, the Mortgage -- and does not mention
2 the note. The next stapled set contains a
3 cover page from the recorder of deeds, and
4 attaches a document styled Assignment of
5 Mortgage, this one's two pages. Beginning at
6 Book 10126, page 198, dated February 8th of
7 2016, by which the U.S. Bank as Trustee of the
8 FRT 2011-Trust identified as Assignor, and
9 identified Wilmington Savings Fund Society for
10 NNPL Trust Series 2012-1 as Assignee. The next
11 stapled document set is two pages containing a
12 cover page from the Register of Deeds, and
13 attaching an Assignment of Mortgage that is
14 dated -- if I can find it on here -- oh, here
15 it is, February 3rd, 2020, by which Wilmington
16 Savings Fund Society FSB d/b/a Christiana
17 Trust, not in its individual capacity, but
18 solely in the capacity of Certificate Trustee
19 for NNPL Trust Series 2012-1, assigns over to
20 U.S. Bank Trust NA as Trustee for Waterfall
21 Victoria Grantor Trust II, Series G.

22 **THE COURT:** Thank you.

23 **MR. BARNES:** You're welcome.

24 **MR. HAYES:** Could you mark these?

25 **COURT REPORTER:** Separately or together?



1 **MR. HAYES:** Yeah, mark them as the one exhibit.

2 **MR. SLOAN:** Your Honor, Mr. Hayes has asked the
3 reporter to mark all five of those as one
4 exhibit. For clarity, I request that they be
5 marked separately.

6 **THE COURT:** I agree.

7 **MR. SLOAN:** Those are separate issues as to each
8 one.

9 **THE COURT:** That's cor- -- I agree with that. They
10 should be separately marked. Did you move the
11 note into evidence?

12 **MR. HAYES:** Not yet, Your Honor, but I have it.

13 **THE COURT:** Okay.

14 **(Plaintiff's Exhibit Numbers 2, 3, 4, 5, and 6 were**
15 **marked for identification purposes.)**

16 **MR. BARNES:** Yeah, yeah, yeah.

17 **Q:** Mr. Amaya, I'm handing you what's been marked
18 as Plaintiff's Exhibit Number 2. Would you
19 identify that document, please?

20 **A:** Yes. This is a certified copy of an Assignment
21 of Mortgage.

22 **(Plaintiff's Exhibit Number 2 was introduced into the**
23 **record.)**

24 **Q:** Okay. Is -- is that assignment -- has it been
25 recorded?



1 A: Yes.

2 Q: Okay. Does ---

3 **MR. BARNES:** Excuse me, Your Honor. Could -- since
4 we had five of these, can we have Mr. Hayes
5 identify for the record which one he's
6 referring to?

7 **THE COURT:** Well, I think what we -- he just said
8 Exhibit 2, which is a little confusing to me
9 because there's already ---

10 **MR. HAYES:** I'm sor- ---

11 **THE COURT:** --- has an Exhibit 2 for identification
12 that he hasn't moved into evidence.

13 **MR. BARNES:** Which ---

14 **COURT REPORTER:** Okay.

15 **MR. BARNES:** --- was Exhibit ---

16 **MR. HAYES:** No -- I have -- no, that -- I did not
17 off- -- I didn't have that marked yet, Your
18 Honor. Not the note yet.

19 **COURT REPORTER:** So, you want that to be 2 and those
20 to be 3 through 7?

21 **MR. HAYES:** Yeah -- no. I want the Note to be 3, if
22 it's okay, Your Honor.

23 **THE COURT:** I don't have a problem with that. Do
24 you have a problem that?

25 **MR. BARNES:** That's not going to work because if



1 we're marking these individually, and now we're
2 -- the first of these AOMs is 2 ---

3 **MR. HAYES:** I didn't ---

4 **MR. BARNES:** --- we have 2, 3, 4, 5, 6. And if he
5 intends to move what he calls the note, which
6 is actually more than that, into evidence, that
7 would be 7, but we've got a problem with that,
8 too.

9 **MR. SLOAN:** Yeah ---

10 **MR. HAYES:** Your Honor, that's marked as Exhibit 2.
11 I did, I did not -- I did not have the note
12 marked yet.

13 **THE COURT:** You had him identify it.

14 **MR. HAYES:** No, I did not have him identify the
15 note. Mr. ---

16 **MR. BARNES:** I did.

17 **MR. HAYES:** --- Barnes read it into the -- read what
18 he was looking at into the record, but I did
19 not have it marked yet.

20 **MR. BARNES:** That's accurate. I did not know that
21 Mr. Hayes was just going to have him look at
22 it, identify it, and then skip to something
23 else.

24 **THE COURT:** Okay. I thought you had entered it as -
25 --



1 MR. HAYES: Okay.

2 THE COURT: --- for identification, but.

3 MR. HAYES: And I ---

4 THE COURT: You're telling me you have not done
5 that?

6 MR. HAYES: No, I have not done that yet, Your
7 Honor. It's not been marked ---

8 MR. BARNES: That's accurate, he didn't because
9 there would have been more for me to say.

10 THE COURT: All right. So, let's ...

11 MR. BARNES: So, my request at this point, Judge, is
12 if we could -- if we're starting at 2, now ---

13 THE COURT: Right.

14 MR. BARNES: --- each of these is a -- each of these
15 cover pages with the AOM is a separate numbered
16 exhibit, starting with 2. And, I guess, if Mr.
17 Hayes identified those, just so we have a nice
18 clean record.

19 MR. HAYES: Yeah, that's what I'm trying to do by
20 having him read off the top of Exhibit 2, the
21 book and page number.

22 MR. BARNES: I didn't know if you asked him that
23 yet.

24 MR. HAYES: Yes, I did.

25 MR. BARNES: Okay. My bad.



1 Q: Would you read the book and page number on
2 Exhibit 2, please?

3 A: Yes. Book 6727, page 330 through 331.

4 Q: Okay. I -- does this -- does this document,
5 does it appear to be stamped as a true copy?

6 A: Yes.

7 Q: Okay. Where does it appear to be recorded?

8 A: In the records of Dorchester County.

9 Q: Okay. Where at in the records in Dorchester
10 County, is there a specific place?

11 A: Yes. At the bottom of the page there is a
12 Register of Deeds, Dorchester County, South
13 Carolina ---

14 Q: Okay. Thank you. Would you go to the next
15 page?

16 A: Yes.

17 **THE COURT:** What's the next page?

18 **MR. HAYES:** Oh, I'm sorry. Book 6727 page 331.

19 **THE COURT:** Still on -- on Number 2?

20 **MR. HAYES:** Yea- -- Yes, sir. Yes, sir.

21 Q: And read the paragraph starting with, for value
22 received.

23 A: For value received, we hereby set over,
24 transfer and assign onto GMAC Mortgage, LLC,
25 GMAC Mortgage Corp., 500 Enterprise Road,



1 Horsham, PA, 19044, its successors and assigns,
2 all its rights, title, interest in and to
3 certain mortgage, together with the note
4 executed by Jamie Singleton to Mortgage
5 Electronic Registration Systems, Inc. as
6 nominee for People's Choice Home Loan, Inc.
7 MIN number 100273900102812475, dated January 4,
8 2006.

9 Q: Okay. Does -- you read a MIN number. Is that
10 -- would you look at Plaintiff's Exhibit Number
11 1?

12 A: Yes.

13 **(Plaintiff's Exhibit Number 1 was referenced at this**
14 **time.)**

15 Q: Does the MIN number on Plaintiff's Exhibit
16 Number 1 match up with the MIN number on
17 Plaintiff's Exhibit Number 2?

18 A: Yes.

19 Q: Okay. And you -- you did read the entire first
20 paragraph where it -- it talks about the
21 mortgage -- the actual mortgage book and page
22 that's being re- -- assigned, did you not?

23 A: No. You stopped me, dated January 4, 2006, I
24 think.

25 Q: Okay. Will you -- would you finish the rest of



1 that sentence, please? I apologize.

2 A: And duly recorded in the public records of
3 Dorchester County, State of South Carolina, on
4 January 12th, 2006, in Mortgage Book 5142, at
5 page 168.

6 Q: Okay. And you just finished reading
7 Plaintiff's Exhibit Number 2, correct?

8 A: Yes.

9 Q: Okay.

10 A: The first paragraph on the second page.

11 Q: Okay.

12 **MR. HAYES:** Your Honor, I move that Plaintiff's
13 Exhibit Number 2 be moved into evidence.

14 **(Plaintiff's Exhibit Number 2 was offered into
15 evidence.)**

16 **THE COURT:** Objection?

17 **MR. BARNES:** Assuming it's the two pages of
18 recorders paved here, and the AOM, no
19 objection.

20 **THE COURT:** All right. Exhibit -- it's -- Exhibit
21 Number 2 without objection. Assignment of
22 Mortgage.

23 **MR. HAYES:** Okay. Thank you, Your Honor.

24 **THE COURT:** Found in Book 6727 at page 330,
25 Dorchester Register of Deeds Office.



1 (Plaintiff's Exhibit Number 2 was admitted into
2 evidence.)

3 Q: Mr. Amaya, I'm handing you what's been marked
4 as Plaintiff's Exhibit Number 3. Would you
5 identify this document, please?

6 A: It appears to be a certified copy of an
7 Assignment of Mortgage.

8 (Plaintiff's Exhibit Number 3 was introduced into the
9 record.)

10 Q: Okay. And would you -- does this document
11 appear to be recorded?

12 A: Yes.

13 Q: Where is it recorded?

14 A: This document itself on the first page shows
15 recorded Book 8010 page 230 through 231.

16 Q: Okay. And would you read the -- where is it
17 recorded?

18 A: It is showing Register Of Deeds, Dorchester
19 County, South Carolina, and it provides also an
20 address.

21 Q: Does this appear to be a certified copy?

22 A: Yes.

23 Q: Okay. Would you read the paragraph that
24 starts, for value received, please?

25 A: Yes. On the second page?



1 Q: Yes, please.

2 A: For value received, we hereby set over,
3 transfer and assign onto 50 by 50 REO, LLC, c/o
4 AMS Servicing, LLC, 3374 Walden Avenue, Depew,
5 New York 14043, its successors and assigns, all
6 its rights, title and interest in and to a
7 certain mortgage executed by Jamie Singleton to
8 Mortgage Electronics Registration Systems, Inc.
9 as nominee for People's Choice Home Loan, Inc.,
10 its successors and assigns, MIN
11 100273900102812475, dated January 4, 2006, and
12 duly recorded in the public records of
13 Dorchester County, State of South Carolina, on
14 January 12, 2006, in Mortgage Book 5142, at
15 page 168.

16 Q: Okay.

17 **MR. HAYES:** Your Honor, I move that Plaintiff's
18 Exhibit Number 3 be admitted into evidence.

19 **(Plaintiff's Exhibit Number 3 was offered into**
20 **evidence.)**

21 **THE COURT:** Any objection?

22 **MR. BARNES:** Again, assuming we're talking about the
23 two-page document, the Assignment of Mortgage,
24 and the Register of Deeds cover page, no
25 objection.



1 **THE COURT:** All right. Exhibit 3 is entered into
2 record without objection, Number 3.

3 **(Plaintiff's Exhibit Number 3 was admitted into**
4 **evidence.)**

5 Q: I've handed you what's been marked as
6 Plaintiff's Exhibit Number 4, Mr. Amaya. Can
7 you identify Plaintiff's Exhibit Number 4,
8 please?

9 A: Yes. It's a certified copy of an Assignment of
10 Mortgage.

11 **(Plaintiff's Exhibit Number 4 was introduced into the**
12 **record.)**

13 Q: Okay. Does it have a book and page number on
14 it?

15 A: Yes.

16 Q: Would you read the book and page, please?

17 A: Yes. It shows Book 8483, pages 135 through
18 136.

19 Q: Okay. And does this document appear to be a
20 certified copy of a document recorded in the
21 Register of Deeds for Dorchester County?

22 A: Yes, it does.

23 Q: Okay. Would you turn to the next page and read
24 the -- the paragraph that starts, for value
25 received, please?



1 A: Yes. For value received we hereby set over,
2 transfer and assign onto the U.S. Bank NA, as
3 Trustee for the FRT 2011-1 Trust, c/o AMS
4 Servicing, LLC, 3374 Walden Avenue, Depew, New
5 York 14043, its successors and assigns, all its
6 rights, title and interest in and to a certain
7 mortgage, executed by Jamie Singleton to
8 Mortgage Electronic Registration Systems, Inc.
9 a nominee for People's Choice Home Loans, Inc.,
10 its successors and assigns, MIN
11 100273900102812475, dated January 4, 2006, and
12 duly recorded in the public records of
13 Dorchester County, State of South Carolina, on
14 January 12th, 2006 in Mortgage Book 5142 at
15 page 168. This mortgage was subsequently
16 assigned to GMAC Mortgage, LLC by Assignment of
17 Mortgage dated July 14th, 2008, and recorded
18 July 22nd, 2008 in Mortgage Book 6727 at page
19 331. This Mortgage was subsequently assigned
20 to five -- well, excuse me, to 50 by 50 REO,
21 LLC by Assignment of Mortgage dated August
22 31st, 2011, and recorded September 14, 2011, in
23 Mortgage Book 8010 at page 230.

24 Q: Okay.

25 **MR. HAYES:** Your Honor, I move that Plaintiff's



1 Exhibit Number 4 be admitted into evidence.
2 **(Plaintiff's Exhibit Number 4 was offered into**
3 **evidence.)**

4 **THE COURT:** Any objections?

5 **MR. SLOAN:** No objection, Your Honor.

6 **THE COURT:** The exhibit, marked for identification,
7 Number 4 is now moved into evidence and will
8 become Exhibit Number 4.

9 **(Plaintiff's Exhibit Number 4 was admitted into**
10 **evidence.)**

11 Q: Mr. Amaya, I have handed you what has been
12 marked as Plaintiff's Exhibit Number 5. Would
13 you tell me if Plaintiff's Exhibit Number 5 has
14 any recording information on it, such as a book
15 and page number?

16 A: Yes. Book 10126, page 197 ---

17 Q: Okay. Does ---

18 A: --- through 199.

19 **(Plaintiff's Exhibit Number 5 was introduced into the**
20 **record.)**

21 Q: Okay. Does the -- does this appear to be a
22 certified copy of -- from -- a certified copy
23 from the Dorchester County Register of Deeds?

24 A: Yes.

25 Q: Okay. Would you read the paragraph on the next



1 page that begins, for value received, please?

2 A: Yes. For value received the receipt and
3 sufficiency of which is hereby acknowledged,
4 the undersigned U.S. Bank NA, as Trustee of the
5 FRT 2011-1 Trust, Assignor, whose address is
6 above, does hereby grant, sell, assign,
7 transfer, and convey to Wilmington Savings Fund
8 Soc for NNPL Trust Series 2012-1, Assignee,
9 whose address is above, all interest of the
10 undersigned Assignor in and to the following
11 described mortgage. You want me to read the
12 description or just stop ---

13 Q: Yes, please.

14 A: Date of Mortgage, 01/04/2006, executed by
15 Mortgagors Ja- -- Jamie Singleton, to and in
16 favor of Mortgagee, Mortgage Electronics
17 Registration Systems, Inc. as nominee for
18 People's Choice Home Loans, Inc., filed of
19 record in Book 5142, page 168, in the Office of
20 the Clerk of Court of Dorchester County, South
21 Carolina, on 01/12/2006, prop- ---

22 Q: And -- go ahead. I'm sorry.

23 A: Property, 5505 Rowsham Place, North Charleston,
24 South Carolina 29418, as described in the
25 mortgage. Given to secure certain promissary



1 note in the amount of \$212,000 payable to
2 Mortgagee. Together with the notes and
3 obligations therein described or referred to,
4 the money due and to become due thereon, with
5 interest and all rights accrued or to accrue
6 under said mortgage. Want me to continue?

7 Q: That -- that's fine, thank you.

8 **MR. HAYES:** Your Honor, I move that Plaintiff's
9 Exhibit Number 5 be admitted into evidence,
10 please.

11 **(Plaintiff's Exhibit Number 5 was offered into**
12 **evidence.)**

13 **THE COURT:** Any objection?

14 **MR. BARNES:** Assuming it's the same ...

15 **THE COURT:** Exhibit Number 5 is admitted without ---

16 **MR. BARNES:** Yeah ---

17 **THE COURT:** --- objection.

18 **MR. BARNES:** No objection.

19 **(Plaintiff's Exhibit Number 5 was admitted into**
20 **evidence.)**

21 Q: Okay. Mr. Amaya, I'm handing you what's been
22 marked as Plaintiff's Exhibit Number 6. Could
23 you identify this document, please?

24 A: Yes. This is a certified copy of an Assignment
25 of Mortgage.



1 (Plaintiff's Exhibit Number 6 was introduced into the
2 record.)

3 Q: Okay. Is there any recording information on
4 this document?

5 A: Yes. It shows recorded in Book 12313, page 74
6 through 75.

7 Q: Okay. Does this appear to be a certified copy
8 of a document from the Dorchester County
9 Register of Deeds?

10 A: Yes.

11 Q: Okay. Would you turn to the next page and read
12 the -- the -- the part that says -- starts, for
13 value received?

14 A: For value received undersigned, Wilmin- --
15 Wilmington Savings Fund Society, FSB d/b/a
16 Christiana Trust, not in its individual
17 capacity, but solely in its capacity as
18 Certified Trustee for NNPL Trust Series 2012-1
19 a/k/a Wilmington Savings Fund Soc for NNPL
20 Trust Securities 2012-1, Assignor, does hereby
21 transfer, assign, set over and convey to U.S.
22 Bank Trust NA as Trustee for Waterfall Victoria
23 Grantor Trust II, Series G, Assignee, c/o
24 Statebridge Company, LLC, 5680 Greenwood Plaza
25 Boulevard, Suite 100S, Greenwood Village,



1 Colorado 80111, all beneficial interest under
2 the certain mortgage executed by Jamie
3 Singleton in favor of Mortgage Electronic
4 Registration Systems, Inc. as nominee for
5 People's Choice Home Loans, Inc., its
6 successors and assigns. Said mortgage dated
7 January 4, 2006 in the amount of \$212,000 was
8 recorded on January 12th, 2006 in Mortgage Book
9 5142, page 168, public records of Dorchester
10 County, State of South Carolina. The
11 undersigned does hereby remise, release, quiet
12 claim, and convey to U.S. Bank Trust NA as
13 Trustee for Waterfall Victoria Grantor Trust
14 II, Series G, all interest in the property
15 conveyed by said mortgage.

16 Q: Would you read the property address, please?

17 A: Property address, 5505 Rowsham Place, North
18 Charleston, South Carolina 29418.

19 Q: Okay.

20 **MR. HAYES:** Your honor, I move that Plaintiff's
21 Exhibit Number 6 be admitted into evidence.

22 **(Plaintiff's Exhibit Number 6 was offered into**
23 **evidence.)**

24 **THE COURT:** Any objection?

25 **MR. BARNES:** No objection.



1 **THE COURT:** All right. Plaintiff's Exhibit Number 5
2 -- Number 6 is now Exhibit 6 without objection
3 -- admitted without objection.

4 **(Plaintiff's Exhibit Number 6 was admitted into**
5 **evidence.)**

6 **MR. BARNES:** Back to this one now?

7 **MR. HAYES:** (To court reporter) make it -- thank
8 you.

9 **COURT REPORTER:** I'll fix the sticker, sorry.

10 **MR. HAYES:** Okay.

11 **MR. BARNES:** (Reviews document.) Your Honor, we
12 have a -- we have an issue with this one, as
13 well, which I was going to bring up earlier.
14 There are various documents attached to the
15 document that's styled Adjustable Rate Note,
16 the various allonges. The allonges are all
17 hearsay. number one, and number two, since
18 they are separate documents that were not made
19 part of the note at the time the note was
20 executed, we would ask that they be marked
21 separately. And I'm going to voir dire the
22 witness on each one before counsel seeks to
23 move them into evidence.

24 **THE COURT:** I agree with you. Let's mark them
25 separately. I will hear Mr. Hayes on the -- on



1 the issue of -- the hearsay issue, as to the
2 allonges as we arri- -- when we get to those,
3 okay. So, we're just going to talk about the
4 note now, which is dated January 4th, it
5 consists of four pages. And, apparently,
6 there's a mark on the back of the fourth page,
7 which is a -- is an endorsement in blank,
8 without recourse, People's Choice Home Loan,
9 Inc., a Wyoming Corporation, signed by Dana
10 Lantry, Title Assistant Vice President. Is
11 your assertion, Mr. ...

12 **MR. BARNES:** Ayala (ph)?

13 **THE COURT:** Pardon me?

14 **MR. BARNES:** Is it Ayala (ph)?

15 **MR. AMAYA:** Amaya.

16 **MR. BARNES:** Amaya. Sorry.

17 **MR. SLOAN:** It's Amaya.

18 **THE COURT:** Mr. Barnes, are you asserting that the -
19 - that the -- that the stamp payable in blank,
20 is not part of the original note and is
21 hearsay, as well, or ---

22 **MR. BARNES:** Well ---

23 **THE COURT:** Could you verify your position on that?

24 **MR. BARNES:** That's kind of a complicated question
25 because, as you -- we get further into this



1 trial, there's going to be testimony that there
2 were copies of what was claimed to be in the
3 original note produced, where the stamp was on
4 a separate page. Now, today, we have it on the
5 back of one of the -- I think it's the
6 signature page, the last page of what is
7 claimed to be the original note.

8 **THE COURT:** Yes, sir.

9 **MR. BARNES:** So, I can deal with that on cross.

10 **THE COURT:** Okay.

11 **MR. BARNES:** And -- do -- if the Court can reserve
12 on admissibility until my cross, or I can do it
13 on voir dire, either one. Whatever the Court
14 prefers.

15 **THE COURT:** Well, let me ask -- Mr. Hayes, does he
16 have the original note? Are you submitting ---

17 **MR. HAYES:** Yes, sir.

18 **THE COURT:** --- the original note?

19 **MR. HAYES:** That -- that is the original note.

20 **THE COURT:** Can I see it?

21 **MR. HAYES:** Yes, sir.

22 **THE COURT:** What I'm going to ask for us to do --
23 Mr. Hayes to do, is to -- is to -- well, I tell
24 you what, we'll keep it clipped, but we will
25 itemize the attachments with a separate exhibit



1 number, okay?

2 **MR. HAYES:** Yes, sir.

3 **THE COURT:** So, well, how are you marking this for
4 identification?

5 **MR. HAYES:** 7.

6 **THE COURT:** All right. So, it's gonna be marked for
7 -- marked Exhibit 7 for identification. And
8 when you're speaking of an adjustable rate note
9 -- the title of this instrument is an
10 Adjustable Rate Note. The Loan Number is
11 10281247. There is a GMAC number, handwritten.
12 And there's another handwritten number. It
13 consists of four pages. So, that would -- and
14 that fourth page is -- on the back of the page,
15 has a hand st- -- has a -- stamped Pay to the
16 Order of blank, without recourse, People's
17 Choice Home Loan, Inc., a Wyoming corporation
18 by Dana Lantry, Title Assistant Vice President.
19 So, this will be Exhibit Number 7, marked for
20 identification?

21 **(Plaintiff's Exhibit Number 7 was marked for**
22 **identification purposes.)**

23 **MR. HAYES:** Yes, sir.

24 **THE COURT:** And you can keep the document clipped
25 together, but we will identify each separate



1 page with a separate exhibit number.

2 **MR. HAYES:** Okay. Thank you, Your Honor.

3 **THE COURT:** Why don't you have a -- start -- have
4 you a -- let's mark this first document first
5 ---

6 **MR. HAYES:** Okay.

7 **THE COURT:** --- before we get too far out of it.

8 **MR. HAYES:** She has marked the first one, Your
9 Honor, already.

10 **COURT REPORTER:** I'll go back and make it prettier.

11 **MR. HAYES:** Okay.

12 **COURT REPORTER:** Ran out of stickers.

13 **MR. AMAYA:** There was no stickers, Your Honor, so
14 there's ---

15 **MR. HAYES:** She didn't have ---

16 **THE COURT:** Okay.

17 **MR. HAYES:** --- any stickers, Your Honor.

18 **COURT REPORTER:** I put it in red to be visible, in
19 the little -- little box, and then I will put
20 the sticker over it as soon as I have them.

21 **MR. HAYES:** Thank you, Your Honor.

22 **THE COURT:** Okay.

23 **MR. HAYES:** Is it on?

24 **THE COURT:** Is it -- each page marked?

25 **COURT REPORTER:** No, we just did 7.



1 THE COURT: We just did ---

2 MS. TAYLOR: I have -- I have some exhibit stickers.

3 COURT REPORTER: Do you? That would be helpful.

4 Thank you.

5 MS. TAYLOR: I don't know if I have enough, but I

6 have some.

7 THE COURT: It's okay. The -- your little stamp is

8 fine.

9 COURT REPORTER: That will work. And I'll go back

10 and ---

11 MR. HAYES: Oh, this is --

12 COURT REPORTER: --- make it prettier.

13 MR. HAYES: --- this is quite a few. Okay.

14 MR. BARNES: So ---

15 THE COURT: You have a question?

16 MR. BARNES: Just so I'm clear. 7, as its being

17 marked, includes this -- this -- this page that

18 has a stamp on it is separate, but on this

19 other document, it's on the back of another

20 page ---

21 THE COURT: Yes ---

22 MR. BARNES: --- that comprises 7.

23 THE COURT: You want that to be -- that is 7, that's

24 correct.

25 MR. BARNES: And, then the other pages will be



1 different numbers.

2 **THE COURT:** Different numbers. 8, 9, 10, and so
3 forth.

4 **MR. BARNES:** Thank you, Judge.

5 **THE COURT:** And continues serially.

6 **COURT REPORTER:** So each allonge you want to be a
7 separate number?

8 **THE COURT:** Yes -- well, we -- as we get to them, we
9 will mark them, okay. I don't wanna mark them
10 yet ---

11 **COURT REPORTER:** Okay.

12 **THE COURT:** --- until we get to them.

13 **COURT REPORTER:** Then we'll just do 7, and ...

14 **MR. HAYES:** Thank you, Your Honor.

15 Q: Mr. Amaya, I've handed you what's been marked
16 as Plaintiff's Exhibit Number 7 and attached to
17 it are allonges with different dates in
18 sequential order. The -- can you identify that
19 document?

20 A: Yes. It's the original note for the loan in
21 question.

22 **(Plaintiff's Exhibit Number 7 was introduced into the**
23 **record.)**

24 Q: Okay. Is it dated?

25 A: Yes.



1 Q: Are there any names on it?

2 A: Yes, there are. There's a Lender and there's
3 a -- page 44, there is Borrower, Jamie
4 Singleton.

5 Q: Okay. Would you read off the name of the
6 Borrower, and the name of the Lender, please?

7 A: Yes. Lender is People's Choice Home Loans,
8 Inc., a Wyoming Corporation, and the Borrower
9 is Jamie Singleton.

10 Q: Okay. Is this plainti- -- Plaintiff's Exhibit
11 Number 7 dated?

12 A: Yes. It's dated 01/04/2006.

13 Q: 01/04/2006. Is that January 4th, 2006?

14 A: Yes.

15 Q: Okay. Is there a loan amount on it?

16 A: Yes. \$212,000.

17 Q: Okay. Is that the principal loan amount?

18 A: Yes.

19 Q: Okay. Is there a loan number on it?

20 A: Yes.

21 Q: Okay. What is the loan number?

22 A: 10281247.

23 Q: Okay. Plaintiff's Exhibit Number 7, does it
24 appear to be a promissory note?

25 A: Yes, it does.



1 Q: Okay. And this Plaintiff's Exhibit Number 7,
2 is it a document that you received as servicer
3 from the previous servicer?

4 A: Yes, through our custodian.

5 Q: Okay. And -- so, it's in your b- -- business
6 records, correct?

7 **OBJECTION:**

8 **MR. SLOAN:** Objection; leading.

9 **THE COURT:** Sustained.

10 **MR. HAYES:** Okay.

11 Q: What is the interest rate on the note?

12 A: 10.450 percent.

13 Q: And is the note signed?

14 A: Yes.

15 Q: Okay.

16 **MR. HAYES:** Your Honor, I move that the note be
17 admitted into evidence as Plaintiff's Ex- --
18 well, be admitted into evidence.

19 **(Plaintiff's Exhibit Number 7 was offered into**
20 **evidence.)**

21 **THE COURT:** Okay. Any objection to the note being
22 entered?

23 **MR. BARNES:** Well, again I hate to be ---

24 **THE COURT:** One of ---

25 **MR. BARNES:** --- overly ---



1 **THE COURT:** One of four pages, wh- -- and last page
2 has -- has an endorsement in blank on the back
3 by ---

4 **MR. BARNES:** Yeah. That's what I need to voir dire
5 the witness about. So, if we're -- he's
6 seeking to admit the note with the st- --
7 including the stamp ---

8 **THE COURT:** Yes, sir.

9 **MR. BARNES:** --- I need to voir dire the witness.

10 **THE COURT:** I'm sorry, I didn't ---

11 **MR. BARNES:** I need to voir dire the witness before
12 I state my position.

13 **THE COURT:** You want to voir dire the ---

14 **MR. BARNES:** That's how we're treating it.

15 **MR. HAYES:** Your Honor, I -- I think under *Deep*
16 *Keel*, this is enough to authenticate the note,
17 under both the commercial -- I think it was ...

18 **THE COURT:** You're saying to identif- -- to ---

19 **MR. HAYES:** To -- to authenticate the note.

20 **THE COURT:** Authenticate it.

21 **MR. HAYES:** Yeah.

22 **THE COURT:** Well, it's a -- it's a promissory note.
23 Self-identifying -- a self-auth- --
24 authenticating, isn't it?

25 **MR. HAYES:** Right, Your Honor.



1 **THE COURT:** Do you disagree with that?

2 **MR. SLOAN:** Your -- Your Honor, I've got -- I've got
3 *Deep Keel*, right here. The note itself is
4 self-authenticating, we concede that point.
5 The endorsement stamp is not self-
6 authenticating.

7 **MR. HAYES:** Okay. By endorsement stamp, what are
8 you talking about?

9 **MR. SLOAN:** All right. You -- you were talking
10 about the endorsement stamp on the back of page
11 ---

12 **MR. BARNES:** Back ---

13 **MR. SLOAN:** --- four.

14 **MR. HAYES:** Okay.

15 **MR. SLOAN:** Yeah. For -- for that reason, Your
16 Honor, we would -- we would object to that
17 coming in as Exhibit 7 or subject to -- to the
18 voir dire of the witness as -- as to what
19 purports to be the original note.

20 **THE COURT:** All right. Take a -- let's --
21 gentlemen, come up here for a second.

22 **(Side Bar Conversation.)**

23 **THE COURT:** All right. So, you've moved Exhibit 7,
24 which included, I think, a fourth page with a
25 blank endorsement on the back of it. My ruling



1 is that the note consisting of four pages is
2 admissible as a self-au- -- self-authenticated
3 document, I mean, being a negotiable
4 instrument. However, I am going to reserve
5 admission of the blank endorsement for the back
6 of the fourth page until Mr. Barnes has had an
7 opportunity to cross-examine the witness. And
8 then we will revisit whether or not Mr. -- Mr.
9 Hayes' motion to admit this into evidence
10 should be granted or denied.

11 **(Plaintiff's Exhibit Number 7 was admitted into**
12 **evidence.)**

13 Q: Mr. Amaya ---

14 A: Yeah.

15 Q: --- I think you -- regarding Plaintiff's
16 Exhibit Number 7, did -- you said, I believe --
17 and I don't want to put words in your mouth --
18 how -- when did SLS obtain this note?

19 A: When the service transferred through the
20 possession of our custodian.

21 Q: Okay. Did you get it from this custodian or
22 did you get it from somewhere else?

23 A: No, the custodian at the time of the transfer
24 was your law firm.

25 Q: Okay.



1 A: As -- with the trans- -- the custodial duties
2 were transferred over to your law firm.

3 Q: Okay. Okay. Would you -- would you look at
4 Plaintiff's Exh- ---

5 **THE COURT:** You said his law firm?

6 A: Correct, Your Honor.

7 **THE COURT:** Okay.

8 Q: Would you look at Plaintiff's Exhibit Number 7
9 and read the top, please?

10 A: Adjustable Rate Note, Li- ---

11 Q: Go ahead. I'm sorry.

12 A: L-I-B-O-R, Six-Month Index as published in the
13 Wall Street Journal rate caps, including
14 prepayment penalty.

15 Q: Okay. Would you continue reading? Again, I
16 apologize for this, but would you continue
17 reading until I stop you, please?

18 A: Yes. This note contains provisions allowing
19 for changes in my interest rate and my monthly
20 payment. This note limits the amount my
21 adjustable interest rate can change at any one
22 time and the maximum rate I must pay. Then
23 there is the date of 01/04/2006; city, Irvine;
24 state, California. Property address is
25 identified as 5505 Rowsham Place, North



1 Charleston, South Carolina 29418. Continues on
2 to paragraph 1, borrower's promise -- promise
3 to pay. In return for a loan that I have
4 received, I promise to pay U.S. 212- -- and -
5 12,000, this amount is called principal, plus
6 interest, to the order of Lender. Lender is
7 People's Choice Home Loan, Inc., a Wyoming
8 Corporation. I will make all payments under
9 this note in the form of cash, check or money
10 order. I understand that Lender may transfer
11 this note. Lender or anyone who takes this
12 note by transfer and who is entitled to receive
13 payments under this note is called the Note
14 Holder.

15 Paragraph 2, Interest. Interest will be
16 charged on unpaid principal until the full
17 amount of principal has been paid. I will pay
18 interest at a yearly rate of 10.450 percent.
19 The interest rate I will pay may change in
20 accordance with Section 4 of this note. The
21 interest rate required by this Section 2 and
22 Section 4 of the note -- of this Note is the
23 rate I will pay both before and after any
24 default described in section 7(B) of this note.

25 Paragraph 3 -- or, Section 3, Payments.



1 (A) time and place of payments. I will pay
2 principal and interest by making a payment
3 every month. I will make my monthly payment on
4 the 1st day of each month beginning on March 1,
5 2006. I will make these payments every month
6 until I have paid all of the principal and
7 interest and any other charges described below
8 that I may owe under this note. Each monthly
9 payment will be applied as of its scheduled due
10 date and will be applied to interest before
11 principal. If on February 1, 2036, I still owe
12 amounts under this note, I will pay those
13 amounts in full on that date, which is called
14 the maturity date. I will make my monthly
15 payment at P.O. Box 52678, Irvine, CA 92619, or
16 at a different place if required by the note
17 holder. (B) Amount of my initial monthly
18 payment. Each of my initial monthly payments
19 will be in the amount of U.S. \$1,931.33. This
20 amount may change. (C) Monthly payment
21 changes. Changes in my monthly payment will
22 reflect changes in the unpaid principal of my
23 loan and will -- and in the interest rate that
24 I must pay. The note holder will determine my
25 new interest rate and may change the amount of



1 my monthly payment in accordance with Section
2 4 of this note.

3 Section 4, interest rate and monthly
4 payment changes. (A) Change dates. The
5 interest rate will pay may change on the first
6 day of February 2008 and every six months
7 thereafter. Each date on which my interest
8 rate could change is called a change date.
9 Continue?

10 Q: Yes, please.

11 A: (B) the index. Beginning with the first change
12 date, my interest rate will be based on an
13 index. The index is the average of interbank-
14 offered rates for six months US dollar
15 denominated deposits in the London market L-I-
16 P-O-R, LIPOR, as published in the Wall Street
17 Journal. The most recent index figure
18 available as of the date 45 days before each
19 change date is called the current index. If
20 the index is no longer available, the note
21 holder will chose a new index that is based
22 upon comparable information. The note holder
23 will give me notice of this choice.
24 Calculation of changes. Before each change
25 date, the note holder will calculate my new



1 interest date -- my new interest rate by adding
2 six and nine-tenths percent points, 6.9
3 percent, to the current index. The note holder
4 will then round the results of this addition to
5 the nearest one-eighth of one percent points,
6 0.125 percent, subject to the limit states --
7 excuse me -- subject to the limits stated in
8 section 40 below, this rounded amount will be
9 my new index rate until the next change date.
10 The note holder will then determine the amount
11 of the monthly payment that will be sufficient
12 to repay the unpaid principal that I am
13 expected to owe at the change date in full of
14 the maturity date as my new interest rate is
15 sub- substantially equal payments. The result
16 of this calculation will be the new amount of
17 my monthly payment.

18 D, limits on interest rate changes. The
19 interest rate I may -- I am required to pay at
20 the first change date will be greater -- will
21 not be greater than 13.45 percent or less than
22 10.45 percent thereafter. My interest rate
23 will never be increased or decreased on any
24 single change date by more than one percentage
25 point, one percent, from the rate of interest



1 I have been paying for the percip- -- the
2 preceding six months. My interest rate will
3 never be greater than 16.45 percent, my
4 interest rate will never be less than 10.45
5 percent.

6 E, effective date of change. My new
7 interest rate will become effective on each
8 change date. I will pay the amount of my new
9 monthly payment beginning on the first monthly
10 payment date after the change date until the
11 amount of my monthly payment changes again.

12 F, notice of changes. The note holder
13 will deliver or mail to me a notice of any
14 changes in my interest rate and the amount of
15 my monthly payment before the effective date of
16 any change. The notice will include
17 information required by law to be given to me
18 and also the title and telephone number of a
19 person who will answer any questions I may have
20 regarding the notice.

21 Q: Ple- -- please stop and skip paragraphs 5 and
22 6, and read paragraph 7, please.

23 A: 7, borrower's failure to pay as required. (A)
24 late charges or overdue payments. If the note
25 holder has not received the full amount of any



1 monthly payment by the end of 15 calendar days
2 after the date it is due, I will pay a late
3 charge to the note holder. The amount of the
4 charge will be five percent of my overdue
5 payment of principal and interest. I will pay
6 this late charge promptly but only once on each
7 late payment.

8 (B) default. If I do not pay the full
9 amount of each monthly payment on the date it
10 is due, I will be in default.

11 (C) notice of default. If I am in
12 default, the note holder may send me writ- --
13 a written notice telling me that if I do not
14 pay the overdue amount by a certain date, the
15 note holder may require me to pay immediately
16 the full amount of principal that has not been
17 paid and all the interest that I owe on that
18 amount. That date must be at least 30 days
19 after the date on which the notice is mailed to
20 me or delivered by other means.

21 (D) no waiver by a note holder. Even if
22 at a time when I am in default, the note holder
23 does not require me to pay immediately in full
24 as described above, the note holder will still
25 have the right to do so if I am in default at



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a later time.

(E) payment to note holder's cost and expenses. If the note holder has required me to pay immediately in full as described above, the note holder will have the right to be paid back by me or (sic) all of it -- for all of its costs and expenses in enforcing this note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees. Unless applicable law requires a different method, any notice that must be given to me under this note will be given by delivering it or by mailing it by first class mail to me at the property address above, or at a different address if I give the note holder a notice of my different address.

Q: You can skip 8 and 9, please. Would you read paragraph 10, please?

A: 10, waivers. I and any other person who has obligation under this note waive the right of presentment and notice of dishonor. Presentment means the right to require the note holder to demand payment of amounts due. Notice of dishonor means the right to require the note holder to give notice to other persons



1 that amounts due have not been paid.

2 Q: Would you read paragraph 11, please?

3 A: 11, uniform secured note. This note is a
4 uniform instrument with limited variations in
5 some jurisdictions. In addition to the
6 protections given to the note holder under this
7 note, a mortgage deed of trust or security deed
8 -- a security instrument dated the same date as
9 this note protects the note holder from
10 possible losses that might result if I do not
11 keep -- excuse me -- the promise that I make in
12 this note. That security instrument describes
13 how and under what conditions I may be required
14 to make immediate payment in full of all
15 amounts I owe under the note -- under this
16 note.

17 Q: I -- I -- that's -- that's good enough. Would
18 you read the last paragraph please, on -- on
19 that page?

20 A: Yes. If lender exercises the obligation to
21 require immediate payment in full, lender shall
22 give borrower notice of acceleration. The
23 notice shall provide a period of not less than
24 30 days from the date the notice is given in
25 accordance with section 15 within -- which



1 borrower must pay all sums secured by this
2 security instrument. If borrower fails to pay
3 these sums prior to the expiration of this
4 period, lender may invoke any remedies
5 permitted by this security instrument without
6 further notice or demand on borrower.

7 Q: And -- and the note is signed?

8 **OBJECTION:**

9 **MR. SLOAN:** Objection; leading.

10 **THE COURT:** Sustained.

11 Q: Is the note -- is there a signature on the
12 note?

13 A: Yes, there is a signature on page 4 of 4 above
14 the name Jamie Singleton.

15 Q: Okay. Thank you.

16 **MR. HAYES:** Beg your pardon, Your Honor.

17 Q: All right. And on page 4 of the -- of Exhibit
18 7, I think you said there's -- there's this
19 stamp there. And it -- would you read the --
20 the -- well, I guess it was actually on the
21 back, not -- on the back of page 4. Would you
22 read that endorsement on the back of page 4,
23 please?

24 A: Pay to the ---

25 **THE COURT:** I -- I thought we agreed that this was



1 not admissible?

2 **OBJECTION:**

3 **MR. SLOAN:** It -- well, for -- for the record, Your
4 Honor, we maintain our objection.

5 **MR. BARNES:** Well, the Court's already -- the
6 Court's already ruled it's not admissible yet,
7 so he can't testify.

8 **THE COURT:** Agree. I mean --

9 **MR. SLOAN:** Well ...

10 **MR. HAYES:** I apologize, I can ask him about it.

11 **MR. BARNES:** I think all he can ask is is there a
12 stamp there and what's the stamp say, but
13 that's about it.

14 **MR. HAYES:** Well, I -- I did ask if -- is there a
15 stamp there, and ask him -- I asked him to read
16 it, and I didn't -- but I did ask if there's a
17 stamp there. I mean, not -- not sure what else
18 I can ask him, Judge, as far as the ...

19 **THE COURT:** I'll allow it. Go ahead.

20 **A:** Yes. There is a stamp on the back of page 4 of
21 4.

22 **Q:** Okay.

23 **A:** Pay to the order of, it's a blank section,
24 without recourse. People's Choice Home Loan,
25 Inc., a Wyoming Corporation, by Diana Lantry



1 Title Assistant Vice President. And there is
2 a signature on it.

3 Q: Okay. Thank you. Are -- I believe you said
4 that -- when I first asked you where the note
5 came from, you said something about a law firm,
6 is that correct?

7 A: To our custodian, whoever's the acting
8 custodian at the time, which to the best of my
9 recollection, I believe when it was transferred
10 to us last -- I don't have business records in
11 front of me, so, I'm going off of just my
12 recollection ---

13 **OBJECTION:**

14 **MR. SLOAN:** I -- so -- so we're gonna -- ob- -- ob-
15 -- objection, Your Honor. Hearsay. He -- he
16 doesn't have any business records on front of
17 him to rely for non-hearsay testimony.

18 **THE COURT:** That's correct. Objection sustained.

19 Q: Is this note part of the business records of
20 SLS for this particular loan at issue today?

21 A: Yes.

22 Q: Okay.

23 **MR. HAYES:** Okay, Your Honor, I am -- I guess we're
24 going to mark the -- the allonges.

25 **THE COURT:** Yes, sir.



1 MR. HAYES: As -- I guess the first one would be ---

2 MR. BARNES: 8.

3 MR. HAYES: 8. This is not marked. Yeah. Would
4 you mark it as Exhibit 8?

5 (Plaintiff's Exhibit Number 8 was marked for
6 identification purposes.)

7 Q: Would you identify Plaintiff's Exhibit Number
8 8, please?

9 A: Yes. It's an original allonge to note.

10 Q: Okay.

11 OBJECTION:

12 MR. BARNES: Object to form.

13 Q: Is there ---

14 THE COURT: Hold on, hold on. Repeat the question.
15 What was the question?

16 MR. HAYES: I -- I asked him what it was and then --
17 -

18 MR. BARNES: What he said was an original.

19 MR. HAYES: Well, he said the original, I didn't.
20 Yeah.

21 MR. BARNES: Foundation?

22 MR. SLOAN: The -- the witness, Your Honor, said
23 original ---

24 THE COURT: Wait, wait, wait both of you guys can't
25 be arguing about this. Let me get it straight



1 from Mr. -- Mr. Barnes. What -- what is your
2 objection to the form? You can speak.

3 **MR. BARNES:** Okay. If I'm -- if I can do a speaking
4 objection, lack of foundation. But what
5 foundational evidence has been laid that this
6 witness can testify that this document is an
7 original?

8 **THE COURT:** Okay.

9 **MR. HAYES:** He can testify the note was an original.

10 **MR. BARNES:** That's why we brought this all up to
11 begin with.

12 **MR. HAYES:** It -- it -- that ---

13 **THE COURT:** Hold on a second, counsel. Would you
14 read back the question? I'm -- I'm -- I
15 apologize having to do that, but ...

16 **COURT REPORTER:** One second. Sorry, the sound is
17 not coming through the headphones. Give me one
18 second.

19 (Off the record.)

20 **MR. SLOAN:** Your Honor, wh- -- while the court
21 reporter is ---

22 **COURT REPORTER:** Thank you.

23 **MR. SLOAN:** --- hav- -- having the issues, may we
24 have a five-minute ---

25 **MR. BARNES:** Comfort break.



1 **MR. SLOAN:** --- t- -- time out?

2 **THE COURT:** I think it's a good idea to do that.

3 Let's -- let's see what time I've got.

4 **MR. BARNES:** 12:18.

5 **MR. SLOAN:** 12:18, Your Honor.

6 **THE COURT:** Yeah. Let's do this, let's take a break
7 for lunch now, and we'll get back in an hour.

8 Will that be all right ---

9 **MR. HAYES:** That's fine.

10 **THE COURT:** --- all right for you?

11 **MR. SLOAN:** Yes, sir.

12 **THE COURT:** We'll start back at 1:30.

13 (Off the record from 12:18 p.m. until 1:41 p.m.)

14 **THE COURT:** We were trying to find a question. Were
15 you able to find it?

16 **COURT REPORTER:** Sure was.

17 **THE COURT:** Okay. Would you read that question
18 again for me, please?

19 **COURT REPORTER:** Question, would you identify
20 Plaintiff's Exhibit Number 8, please?

21 **THE COURT:** Identify Exhibit 8. And the answer that
22 he -- well, and you objected to -- based on
23 what? You said it -- what -- what -- you
24 objected to the form, to identify Exhibit 8.

25 **MR. BARNES:** Because what he said was it's an



1 original allonge.

2 **THE COURT:** Okay. I'll allow you to move -- I guess
3 it would be a motion to strike that.

4 **MR. BARNES:** Correct.

5 **THE COURT:** The answer because it's non-responsive.
6 Let's start over. We'll start with the
7 question, would you identify Exhibit 8.

8 **MR. HAYES:** Okay.

9 Q: Mr. -- is it Maya?

10 A: Amaya.

11 Q: Amaya. Could you identify the document marked
12 as Plaintiff's Exhibit Number 8?

13 **(Plaintiff's Exhibit Number 8 was referenced.)**

14 A: It is titled Allonge to Note.

15 Q: Okay. So, does it have a -- a name on it?
16 Does it say Borrower?

17 A: Yes, it does.

18 Q: Okay. Does it have -- does it refer to a note?

19 A: Yeah. Yes, it's allonge to note.

20 Q: Okay. Does it have the date of the note?

21 A: Yes.

22 Q: What's the date of the note?

23 A: January 4, 2- -- 2006.

24 Q: And does it have a loan amount on it?

25 A: Yes.



1 Q: Okay. What is the loan amount set for?
2 A: \$212,000.
3 Q: Does it have an interest rate on it?
4 A: Yes, it does.
5 Q: What's the interest rate set for?
6 A: 10.45 percent adjustable.
7 Q: Okay. Does it have a -- any payment dates on
8 it?
9 A: Yes. It has a first payment due on date of
10 March 1, 2006.
11 Q: Okay. And does it have -- is -- is it --
12 allonge, does it say it's payable to anyone?
13 A: Yes, it says pay to the order of 50 by 50 REO,
14 LLC.
15 Q: Okay. Would you r- -- read the next sentence,
16 please?
17 A: Without recourse and without representation or
18 warranty except as set forth in that certain
19 assignment of note and mortgage dated of even
20 -- even date herewith for -- from Jamie
21 Singleton in favor of GMAC Mortgage, LLC.
22 Q: Okay.
23 **MR. HAYES:** Your Honor, I move that the allonge be
24 admitted into evidence as Plaintiff's Exhibit
25 -- well, be moved into evidence.



1 (Plaintiff's Exhibit Number 8 was offered into
2 evidence.)

3 **THE COURT:** Exhibit 8? As Exhibit 8? What's your -
4 - what's that?

5 **OBJECTION:**

6 **MR. BARNES:** We would object to that, Your Honor, on
7 the basis of -- several bases. Number one,
8 it's hearsay. Number two, there's been no
9 foundation laid for the authenticity or
10 reliability of this document. It's not self-
11 authenticating; there's no date as to when this
12 document was created; who created it; the
13 signature isn't notarized; it isn't witnessed.
14 It's classic hearsay. It's being offered for
15 the truth of the matter asserted and there's no
16 underlying foundation to establish it.

17 **MR. HAYES:** Your Honor, it's a self-authenticating
18 document under Rule 902(9), commercial paper
19 and related documents. Commercial paper,
20 signatures thereon, and documents relating
21 thereto. That's exactly -- exactly the
22 language stated in *Deep Keel*, and there was an
23 assignment of note mortgage, as well.

24 **THE COURT:** I'm gonna overrule your objection. It's
25 admissible and it's a self-authenticating



1 document under the business records rule.

2 **MR. HAYES:** Okay. Thank you, Your Honor.

3 **THE COURT:** And, 902(6), or something like that ---

4 **MR. HAYES:** I'm -- okay. L- -- let -- let me -- I
5 want to -- the -- the endorsement -- we were
6 talking about the endorsement on the back of 4.
7 On the back of the original note.

8 **THE COURT:** Yes, sir.

9 **MR. HAYES:** Did the Court allow that in or not? I
10 thought you allowed him to read that and all-
11 -- ad- -- admitted that into evidence, but,
12 maybe not.

13 **THE COURT:** We -- my ruling at the time was that the
14 endorsement, which was an affixed rubber
15 stamped statement payable to the order with a
16 blank name in it ---

17 **MR. HAYES:** Okay.

18 **THE COURT:** --- and signed by somebody from People's
19 Choice, I believe it was, was not admissible
20 pending Mr. Barnes' right to cross examine. If
21 you'd like to renew your motion at this time,
22 I'd be glad to consider it.

23 **MR. HAYES:** Your -- Your Honor, I'd like to renew
24 the motion to have that endorsement admitted
25 into evidence under Rule 902(9).



1 (Plaintiff's Exhibit Number 7.1 was offered into
2 evidence.)

3 **THE COURT:** Same objection?

4 **OBJECTION:**

5 **MR. BARNES:** Same objection, but if you look at the
6 strict language of the rule, quoted by counsel
7 says, related documents. The stamp is not a
8 related document, it's a stamp. It's not in a
9 rule.

10 **MR. HAYES:** I -- I ---

11 **MR. BARNES:** He's seeking to add language to the
12 rule.

13 **MR. HAYES:** An -- an attachment to a note, like an
14 allonge, or any endorsement, any signatures,
15 are documents relating to the commercial paper,
16 Your Honor.

17 **THE COURT:** I -- I agree with you, Mr. Hayes. I
18 think under our level of construction of the
19 business records exception to authentication of
20 the business records exception 902 -- was it 8,
21 you said?

22 **MR. HAYES:** 902(9), Your Honor.

23 **THE COURT:** 902(9). I think that's going to come in
24 under the exceptions authorized by the business
25 records rule ---



1 **MR. HAYES:** Okay. Thank you, Your Honor.
2 **THE COURT:** --- about self-authenticating documents.
3 It's a related business document.
4 **MR. HAYES:** Okay. Thank you, Your Honor.
5 **MS. TAYLOR:** Y- --Your Honor, can we just clarify
6 then -- are we -- are we doing the endorsement
7 as a separate exhibit, or are ---
8 **THE COURT:** Yeah, it's still a separate exhibit.
9 **MS. TAYLOR:** Okay. So -- should -- we need to mark
10 that?
11 **MR. HAYES:** Do we need to mark it?
12 **THE COURT:** You can mark it as ---
13 **MS. TAYLOR:** We could do it as Exhibit 9.
14 **MR. BARNES:** 7-A.
15 **THE COURT:** Wait -- wait a minute ---
16 **MS. TAYLOR:** 7-A.
17 **THE COURT:** --- I'm just going -- I'm going call it
18 Exhibit 7.1.
19 **MR. HAYES:** Okay.
20 **COURT REPORTER:** I'm sorry. To be clear, the back
21 of Exhibit?
22 **MR. HAYES:** Yeah, if you would just put something
23 right there probably (indicating).
24 **(Plaintiff's Exhibit Numbers 7.1 and 8 were marked**
25 **for identification purposes.)**



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(Off the record.)

Q: And Plaintiff's Exhibit Number 8 is -- is it signed?

(Plaintiff's Exhibit Number 8 was referenced.)

A: Yes.

Q: Who is it signed by?

A: Mr. ---

OBJECTION:

MR. BARNES: Objection; foundation. He can't testify as to who this person signed it is.

MR. HAYES: Signatures are presumed valid unless specifically denied in the pleadings. They didn't deny any of the signatures, Your Honor. And, again, this is a self-authenticating document.

THE COURT: Ob- -- objection's overruled.

A: It is signed above the name Elizabeth Foust, Title Authorized Officer for ---

Q: Okay. Authorized officer of who?

A: GMAC Mortgage, LLC.

Q: Okay. Would you look at Plaintiff's Exhibit Number 9.

A: The rest of them have not been marked.

Q: I'm sorry?

A: It has not been marked.



1 MR. HAYES: Oh. I'm sorry. Probably right there.
2 COURT REPORTER: He said one at a time.
3 (Plaintiff's Exhibit Number 9 was marked for
4 identification purposes.)
5 A: Yes.
6 Q: Would you identify this document, please?
7 A: It's titled Allonge to Note.
8 Q: Okay. And this is Plaintiff's Exhibit Number
9 9?
10 A: Yes.
11 Q: Okay. Does it have any numbers on -- on it?
12 A: Yes. Multiple numbers to include loan number
13 ---
14 Q: What's the loan number?
15 A: 0005003310.
16 Q: Okay. Is there a borrower name?
17 A: Yes. Jamie Singleton.
18 Q: Is there a note date?
19 A: Yes. Note date January 4, 2006.
20 Q: A loan amount?
21 A: Yes. Loan amount \$212,000.
22 Q: Is there an interest rate?
23 A: Yes. Interest rate 10.45 percent adjustable.
24 Q: Okay. Is there a -- a -- any payment days?
25 A: Yes. First payment due March 1, 2006.



1 Q: Okay. Is there a maturity date?

2 A: Yes. February 1, 2036.

3 Q: Okay. Is the allonge -- is it pay to the order
4 of anyone or any entity?

5 A: Yes. Pay to the order of US Bank, N.A. as
6 Trustee of the FRT 2011-1 Trust.

7 Q: Okay. And would you read the -- the next
8 sentence that begins without recourse?

9 A: Yes. Without recourse and without
10 representation or warranty except as set forth
11 in that certain Assignment of Note and Mortgage
12 dated of even date herewith from Jamie
13 Singleton in favor of 50 by 50 REO, LLC.

14 Q: Okay. Is -- is the note -- or, excuse me, is
15 the allonge -- is Plaintiff's Number 9 signed
16 by anyone?

17 A: Yes.

18 Q: Would you read who it's signed by?

19 A: Timothy Hartman [sic].

20 Q: Okay. Is he signing on behalf of anyone?

21 A: Yes. Assistant Vice President AMS Servicing,
22 LLC, as attorney in fact for 50 by 50 REO, LLC.

23 Q: Okay. Your Honor, I move that Plaintiff's
24 Number 9 be admitted into evidence.

25 **(Plaintiff's Exhibit Number 9 was offered into**



1 evidence.)

2 THE COURT: Objections?

3 OBJECTION:

4 MR. BARNES: Maintain the same objections, but based
5 upon Your Honor's prior ruling as to 8.

6 THE COURT: All right. Admitted over objection ---

7 MR. HAYES: Okay.

8 THE COURT: --- Exhibit 9.

9 (Plaintiff's Exhibit Number 9 was admitted into
10 evidence.)

11 MR. HAYES: Thank you, Your Honor.

12 Q: Would you turn to Plaintiff's Exhibit Number
13 10, please?

14 A: Yes. It needs to be marked.

15 MR. HAYES: I'm sorry about that. I forgot.

16 (Plaintiff's Exhibit Number 10 was marked for
17 identification purposes.)

18 A: Thank you. Yes.

19 Q: This is -- does Plaintiff's Number 10 have a
20 title?

21 A: Yes. Allonge to Note.

22 Q: Okay. Does it have any numbers on it?

23 A: Yes.

24 Q: What numbers does it have on it?

25 A: On the top it has 170954046.



1 Q: Okay. Does it have a borrower?

2 A: Yes. Borrower Jamie Singleton.

3 Q: Okay. Does it have a date?

4 **THE COURT:** (Sneezes.) Excuse me.

5 **MR. BARNES:** Bless you.

6 A: Bless you, Your Honor. Date is in blank.

7 Q: Okay. Does it have an amount?

8 A: Yes, \$212,000.

9 Q: Okay. Does it have a property address?

10 A: Yes. 5505 Rowshom -- Rowsham Place, North
11 Charleston, South Carolina 29418.

12 Q: Okay. Does it say it's pay to the order of
13 anyone?

14 A: Yes. It says pay to the order of FRT 2013-1
15 Investor LLC, without recourse.

16 Q: Okay. Does it have a date that it was
17 executed?

18 A: Yes. Executed this 4th day of September, 2014.

19 Q: Okay. And is -- is it signed?

20 A: Yes.

21 Q: Who is it signed by?

22 A: D. Wayne Chin. Title Authorized Signer for FRT
23 2011-1 Trust.

24 Q: Okay.

25 **MR. HAYES:** Your Honor, I move that Plaintiff's



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1 Number 10 be admitted into evidence.
2 (Plaintiff's Exhibit Number 10 was offered into
3 evidence.)

4 OBJECTION:

5 MR. BARNES: Same objection, Your Honor.

6 THE COURT: Admitted over objection. Exhibit Number
7 10?

8 MR. HAYES: Yes, sir. Again, under 90- -- 902(9).

9 THE COURT: Yes. Under the self-authentication
10 rule.

11 MR. HAYES: Yes, sir.

12 (Plaintiff's Exhibit Number 10 was admitted into
13 evidence.)

14 MR. HAYES: Okay. Let's go to Num- -- I remembered
15 this time. Oh, I'm sorry. Do you want to take
16 this?

17 (Plaintiff's Exhibit Number 11 was marked for
18 identification purposes.)

19 A: Yes.

20 Q: This is Plaintiff's Number 11. Does this
21 document have a title?

22 A: Yes. Allonge to Note.

23 Q: Does it have any numbers on it?

24 A: Yes. 170954046.

25 Q: Does it have a borrower?



1 A: Yes. Borrower Jamie Singleton.

2 Q: Does it have a date?

3 A: Blank. Date and that section is blank.

4 Q: Okay. Does it have an amount?

5 A: Yes. \$212,000.

6 Q: Does it have a property address?

7 A: Yes. 5505 Rowsham Place, North Charleston,
8 South Carolina 29418.

9 Q: Is it pay to the order of anyone?

10 A: It is blank. Pay to the order of blank,
11 without recourse.

12 Q: Okay. Does it have an execution date?

13 A: Executed this 4th day of September, 2014.

14 Q: Okay. Is it -- who -- did anyone sign it?

15 A: Yes. D. Wayne Chin, Authorized Signer -- si-
16 -- sorry -- Authorized Signatory for FRT 2013-1
17 Investor LLC.

18 **MR. HAYES:** Okay. Your Honor, I move that
19 Plaintiff's Number 11 be moved into eviden- --
20 or be admitted into evidence.

21 **(Plaintiff's Exhibit Number 11 was offered into**
22 **evidence.)**

23 **THE COURT:** Mr. Hayes, I -- I apologize, I have
24 gotten off track.

25 **MR. HAYES:** I'm sorry.



1 **THE COURT:** Let me go back ---

2 **MR. HAYES:** Maybe I -- maybe I went out of order or
3 something, Your Honor.

4 **THE COURT:** I'm just going to repeat for the -- for
5 the record what I see. We marked the stamped
6 without recourse endorsement by People's Choice
7 as Exhibit 7.1. We marked as Exhibit 8 the
8 allonge to the note, pay to the order of 50-50
9 -- 50 by 50 REO, LLC, signed by GMA, Exhibit
10 8. Exhibit 9 was the allonge to note signed by
11 Mr. Hartman [sic], I think, perhaps. Timothy
12 ---

13 **MR. HAYES:** Yes, sir. Yes, sir.

14 **THE COURT:** This is a -- a -- an assignment from 50
15 by 50 REO to the order of -- or pay to the
16 order of -- a note paid to order of US Bank NA
17 as Trustee for -- of the FRT 2011-1 Trust.

18 **MR. HAYES:** That -- that was 9, Your Honor.

19 **THE COURT:** That's 9. Okay. I see what I'm
20 confusing. The next allonge is from Mr. Chin
21 of the FRT 2011-1 Trust. Pay to the order of
22 FRT 2013-1, Investor LLC, without recourse.
23 That would be 10, correct?

24 **MR. HAYES:** Correct, Your Honor.

25 **THE COURT:** I mis-marked it in notes as ---



1 MR. HAYES: Okay.

2 THE COURT: --- Exhibit 10.

3 MR. HAYES: All right. Thank you, Your Honor.

4 THE COURT: So, I apologize to everyone. So, we're
5 now at Exhibit 11, which was the allonge to the
6 note signed by DeWayne Chin for FRT 2013-1
7 Investment, LLC endorsement one without
8 recourse, dated September 4th, 2014. That is
9 Exhibit 11?

10 MR. HAYES: Yes, Your Honor.

11 THE COURT: And, that's where we are? And you
12 wanted ...

13 MR. HAYES: Yes, Your Honor, I had moved that
14 Exhibit 11 -- Plaintiff's Exhibit 11 be
15 admitted into evidence.

16 THE COURT: All right. Exhibit 11 is moved over
17 into evidence. Mr. Barnes, objection?

18 OBJECTION:

19 MR. BARNES: Yes, sir.

20 THE COURT: Okay.

21 (Plaintiff's Exhibit Number 11 was admitted into
22 evidence.)

23 MR. HAYES: Okay. Now ---

24 THE COURT: Now, are we 12? Have you done 12 yet?

25 MR. HAYES: Yeah, we're -- no, we're going to 12.



1 (Laughter.)

2 **THE COURT:** Okay.

3 **MR. HAYES:** That's good. I know this is long-
4 winded, Your Honor.

5 **THE COURT:** Yes. Well, it sets the record up. I
6 don't particularly like multi-page records
7 unless they're Bates stamped, because it's
8 almost impossible to make a record of them.

9 **MR. HAYES:** Yeah. Okay. Okay.

10 **THE COURT:** Uh-huh.

11 **(Plaintiff's Exhibit Number 12 was marked for**
12 **identification purposes.)**

13 **Q:** Mr. Amaya, moving to Plaintiff's -- what's been
14 marked as Plaintiff's Exhibit Number 12, what
15 does this document appear to be? Or, would you
16 identify this document?

17 **A:** Yes. It's a Note Allonge.

18 **Q:** Is there a borrower listed on it?

19 **A:** Yes. Jamie Singleton.

20 **Q:** Is there an originating lender listed on it?

21 **A:** Yes. People's Choice Home Loan, Inc.

22 **Q:** Is there a -- a note date listed on it?

23 **A:** Yes. Date of note 1/4/2006.

24 **Q:** Is there a property address on it?

25 **A:** Yes. Property address, 5505 Rowsham Place,



1 North Charleston, South Carolina 29418.

2 Q: Is there a loan amount listed on it?

3 A: Yes. Original loan amount of \$212,000.

4 Q: Okay. Is there -- are there any numbers on it?

5 A: Yes. There's a WAM ID and an SMS ID.

6 Q: Okay. What -- do you know what a WAM ID is?

7 A: These are ID numbers. The WAM -- off the top

8 of my head I don't recall if it was the Wells

9 Fargo, the custodial number, or -- yeah, I

10 believe it was the Wells Fargo custodial

11 number, but it might have been one of the

12 servicer numbers.

13 Q: Okay. What about the SMS ID that you

14 mentioned?

15 A: Yes. That appears to be a servicer number.

16 Q: Okay. Would you read the WAM ID number?

17 A: 109010289.

18 Q: And would you read the SMS ID number?

19 A: 578125938.

20 Q: Okay. And is the -- is the allonge paid to the

21 order of anyone?

22 A: Yes. Pay to the order of Waterfall Victoria

23 Grantor Trust II, Series G ---

24 Q: Okay.

25 A: --- without recourse or warranty.



1 Q: Okay. And is it signed -- is this allonge
2 signed by anyone?

3 A: Yes. Cynthia Brook [sic]. Title, Manager.

4 Q: And, did Cynthia Brock sign on behalf of
5 anyone?

6 A: Yes. By New Penn Financial d/b/a Shellpoint
7 Mortgage Servicing as attorney in fact.

8 Q: Okay. Would you -- is -- did she -- there's --
9 there's something on there that talks about --
10 starts Wilmington Savings Fund Society. Would
11 you read that, please?

12 A: Wilmington Savings Fund Society, FSB d/b/a
13 Christina Trust, not in its individual capacity
14 but solely in its capacity as Certificate
15 Trustee for NNPL Trust Series 2012-1.

16 Q: Okay. And, then it says by, can you ---

17 A: Yes. By New Penn Financial d/b/a/ Shellpoint
18 Mortgage Servicing as attorney in fact.

19 Q: And, I -- I believe you said it was signed by
20 Cynthia Brock?

21 A: Yes, that is correct.

22 Q: Okay.

23 **MR. HAYES:** Your Honor, I move that this Plaintiff's
24 Exhibit Number 12 be admitted into evidence.

25 **(Plaintiff's Exhibit Number 12 was offered into**



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evidence.)

OBJECTION:

MR. BARNES: Same series of objections.

THE COURT: This will be Exhibit Number 12 over the objection of the defendant.

(Plaintiff's Exhibit Number 12 was admitted into evidence.)

MR. HAYES: Okay. Thank you, Your Honor.

THE COURT: Admitted, 12.

MR. HAYES: And ---

THE COURT: And, it's Rule 902.

MR. HAYES: Okay. 902(9).

THE COURT: 9.

MR. HAYES: Yeah. Would you let -- have her mark the next one?

(Plaintiff's Exhibit Number 13 was marked for identification purposes.)

Q: What does Plainti- -- Plaintiff's Exhibit Number 13, what is it?

A: Allonge to Note.

Q: Okay. Is there a borrower listed on it?

A: Yes. Jamie Singleton.

Q: Okay. Is there a property address?

A: Yes. Property address 5505 Rowsham PI5505 [sic] Rowsham PI [sic].



1 Q: Is there a loan number on it?

2 A: Yes. Loan number 555850755.

3 Q: Okay. Is the note paid to anyone -- paid to
4 the order of anyone?

5 A: Yes. Pay to the order of WestVue NPL Trust II.

6 Q: Okay. Is -- is -- is it signed by anyone?

7 A: Yes. Cynthia M. Brock, Manager.

8 Q: Who did she sign on behalf of?

9 A: Wilmington Savings Fund Society FSB d/b/a
10 Christina [sic] -- Christiana Trust, not in its
11 individual capacity, but solely in its capacity
12 as Certificate Trustee for NNPL Trust Series
13 2012-34.

14 Q: Okay.

15 **MR. HAYES:** Your Honor, beg the C- -- Court's --
16 Your Honor, I move that Plaintiff's Number 13
17 be admitted into evidence.

18 **(Plaintiff's Exhibit Number 13 was offered into
19 evidence.)**

20 **OBJECTION:**

21 **MR. BARNES:** Same objections.

22 **THE COURT:** Same objection? This will be admitted
23 pursuant to Rule 902(9), self-authenticating
24 related business document.

25 **(Plaintiff's Exhibit Number 13 was admitted into**



1 evidence.)

2 MR. BARNES: May I have a minute, Your Honor?

3 THE COURT: Yes, sir. Exhibit 13.

4 So, if any of y'all need to take a break,
5 please just wave your hands, and do like you
6 did -- go on, Mr. Sloan.

7 MR. BARNES: I was -- I was going to do that right
8 now.

9 THE COURT: Okay. Let's do that.

10 MR. BARNES: If you don't mind.

11 THE COURT: Let's take a break.

12 (Off the record from 2:08 p.m. until 2:14 p.m.)

13 Q: Mr. Amaya, we -- we just went over the allonges
14 and we -- we -- Number 13. Would you look at
15 13 and is it -- you said it was paid to the
16 order of WestVue NPL Trust II by Wilmington
17 Savings Fund Society, but the prior allonge
18 shows that Wilmington Savings Fund Society had
19 already transferred it to Waterfall Victoria
20 Grantor Trust II, Series G. Look at 12 and 13.

21 (Plaintiff's Exhibit Number 12 was referenced.)

22 A: Yes.

23 Q: Okay. Can you explain that?

24 A: There's two separate Wilmington Savings Fund
25 Society Trusts, one of them is the NNPL Trust



1 Series 2012-34, the other one is 2012-1.

2 Q: Okay. But when -- when it was -- but when it
3 was assigned to -- I'm looking at Plaintiff's
4 Number 12. When it was assigned to -- assigned
5 to Waterfall Vi- -- Victoria Grantor Trust,
6 Series G, by the Wilmington Savings Fund
7 Society, and then it goes -- it says Trust
8 Series 2012 -- 2012-1, the -- this allonge
9 shows that it was transferred to Waterfall
10 Victoria Grantor Trust II, Series G. So, how
11 could -- how could Wilmington Fund Society then
12 transfer it to WestVue NPL Trust II in 13 -- in
13 Plaintiff's Number 13?

14 A: That is because I misspoke. It appears to be
15 pay to the order of blank, and it's WestVue NPL
16 Trust II by the Wilmington Trust signing for
17 them.

18 **OBJECTION:**

19 **MR. BARNES:** Objection, Your Honor. The document
20 speaks for itself. It's pai- -- it says pay to
21 the order of WestVue Trust -- WestVue NPL Trust
22 II. That's a special endorsement. That's not
23 an endorsement in blank, because right
24 underneath that it says by. Pay to the order
25 of, identifies the entity, by the Wilmington



1 entity. It's not an endorsement in blank.
2 It's a special endorsement.

3 **THE COURT:** His explanation is that it's -- I'll let
4 you cross examine ---

5 **MR. HAYES:** Okay. Yeah.

6 **THE COURT:** So -- so, I mean, I -- his explanation
7 is it was endorsed in blank. Is that correct?

8 **MR. HAYES:** Yes, sir. It -- yes, sir.

9 **THE COURT:** All right.

10 **Q:** Could -- are endorsements -- you've seen a lot
11 of endorsements in your time, have you not?

12 **A:** Yes.

13 **Q:** Are sometimes endorsements done in error?

14 **A:** Yes.

15 **Q:** Okay. Could that've occurred in that case with
16 Plaintiff's Number 13?

17 **OBJECTION:**

18 **MR. SLOAN:** Objection. Calls for speculation.

19 **MR. BARNES:** Read my mind.

20 **THE COURT:** Sustained.

21 **MR. HAYES:** Okay.

22 **Q:** What would be your explanation for Plaintiff's
23 Number 13 being a s- -- the allonge being out
24 of order?

25 **OBJECTION:**



1 MR. SLOAN: Objection; hearsay.

2 MR. HAYES: No, I'm asking for his explanation.
3 That's his -- he's -- he can testify as -- as
4 to why he believes it. Or -- or he can testify
5 -- yeah.

6 MR. SLOAN: For one thing ---

7 MR. BARNES: On that point, Your Honor, then since
8 he's saying out of order. Out of whose order?
9 There are no dates on any of these documents.

10 MR. HAYES: Okay.

11 MR. BARNES: We don't know what order they are.

12 THE COURT: All right. Well, that's an issue we'll
13 have to sort out over the course ---

14 MR. HAYES: Okay.

15 THE COURT: --- of the trial. But his explanation
16 is an endorsement blank and what was the other
17 thing?

18 MR. HAYES: The -- I asked if it was down- -- could
19 it be -- have done in error. That's it.

20 THE COURT: Could it have been done in error? All
21 right. Go ahead.

22 A: Yeah. Yes, Your Honor.

23 Q: Okay.

24 A: Just as it could've been put back in incorrect
25 order when the document was being executed.



1 Q: Okay.

2 **MR. BARNES:** I -- I'm sorry, Your Honor, I thought
3 you as- -- sustained my speculation objection.
4 Or, Mr. Sloan's.

5 **THE COURT:** Mr. Sloan's objection was on hearsay.
6 That's why you guys have to stop doing ---

7 **MR. BARNES:** Yes, I'm g- -- I know.

8 **MR. SLOAN:** Yes, sir. Yes, sir.

9 **MR. BARNES:** I thought it was speculation. When he
10 said could have been, could it have been.

11 **THE COURT:** Yeah, I sustained that objection.

12 **MR. BARNES:** Okay.

13 **THE COURT:** I sustained the could have been
14 objection because that's speculating.

15 **MR. BARNES:** Gotcha. Thank you.

16 **MR. HAYES:** Beg the Court's indulgence.

17 **THE COURT:** Mr. Sloan? Mr. Sloan, please, either
18 one -- one of the two of you guys choose who's
19 gonna make the objections. I -- you can't be
20 doing double team Mr. Hayes on the testimony
21 he's eliciting.

22 **MR. BARNES:** Yes, sir.

23 **THE COURT:** One or the other. Not both.

24 **MR. BARNES:** Yeah. Yes, sir.

25 **THE COURT:** So, are we going to assign that duty to



1 you, Mr. Barnes?

2 **MR. BARNES:** (Laughter.) Apparently.

3 **THE COURT:** Okay.

4 **MR. BARNES:** That's why I'm in this seat.

5 **THE COURT:** May I see the original allonge to note?

6 **MS. TAYLOR:** Your copy's up there.

7 **COURT REPORTER:** 14 and 15.

8 **MR. HAYES:** 14 and 15. 14 -- did you find your
9 stickers?

10 **COURT REPORTER:** I'm going to bring a whole binder
11 tomorrow.

12 **MR. HAYES:** Okay. I've got one. They're going to
13 get us one.

14 **(Plaintiff's Exhibit Numbers 14 and 15 were marked
15 for identification purposes.)**

16 **THE COURT:** I'd like the record to reflect as it
17 relates to the note -- the adjustable rate note
18 -- that I have examined the pages 1 through 4,
19 and Exhibits 8 through 13, and want to make a
20 point for the record that there are multiple --
21 multiple in ---

22 **MR. HAYES:** Re-staplings, Your Honor?

23 **THE COURT:** --- stapled -- stapled -- staples --
24 puncture holes in the document. Which lends
25 itself to a question of when these documents



1 were attached to the original note, and the
2 order in which they are attached to the extent
3 that they may have some issue. And it's just
4 a issue that I want to note for the record.

5 **MR. HAYES:** Yes, sir.

6 **THE COURT:** The number of staple holes in that note
7 and the attached allonges.

8 **MR. HAYES:** Thank you, Your Honor. May I continue?

9 **THE COURT:** Go ahead.

10 Q: Mr. Amaya, you've been handed what's been
11 marked as Plaintiff's Exhibit Number 14. And
12 ---

13 **MR. BARNES:** Excuse me, but, before we do that, I'd
14 just like to identify what you handed me, like
15 we've been doing all along.

16 **MR. HAYES:** These are Bailee Letters.

17 **MR. BARNES:** Yeah, I know. I just wanna identify
18 them for the ---

19 **MR. HAYES:** Yeah.

20 **MR. BARNES:** --- record ---

21 **MR. HAYES:** This is ---

22 **MR. BARNES:** --- so you and I are on the same page.

23 Mr. Hayes handed me two documents, Your
24 Honor, that are stapled together. The first
25 one is two pages. The first one being on the



1 letter -- letterhead, excuse me, of Crawford &
2 von Keller, LLC in Columbia, South Carolina,
3 attaching some sort of inventory checklist.
4 The second one is a three-page -- three pages
5 put together, styled Bailee Letter, with no
6 letterhead, with a laundry list on the front
7 page and the top of the second page, some
8 narrative on the second page, and some -- a
9 signature page with some other unidentified
10 information on the third page.

11 **THE COURT:** Thank you, Mr. -- Mr. Barnes. Thank you
12 very much.

13 **MR. BARNES:** You're welcome.

14 **Q:** Mr. Amaya, can you identify the Plaintiff's
15 Exhibit Number 14?

16 **A:** Yes. This is a Bailee letter.

17 **Q:** What is a Bailee letter?

18 **A:** It's a letter that's sent with collateral file
19 identifying what documents are being sent and
20 asking for the individuals receiving it to take
21 the custodial duties of maintaining the records
22 of ---

23 **Q:** Okay. What do you mean by collateral ...

24 **A:** When original documents, notes, mortgages, are
25 moved, that's the collateral file. That's what



1 we refer to as the collateral file. So,
2 collateral documents would be original title,
3 policy, note, mortgage, sometimes, even copies
4 of the notes and mortgages will be attached,
5 allonges, assignments, modifications. Those
6 documents are sent. A Bailee letter is used
7 to, one, track the transfer, and, two, to pass
8 on the custodial duties. You're accepting the
9 receipt of these documents. You get them, you
10 have to verify that you're authorized to
11 receive them and that you're going to ---

12 Q: Okay.

13 A: --- hold on to the custodial duties.

14 Q: Is this -- you said Bailee letter?

15 A: Yes.

16 Q: Okay. Is this Bailee letter something that
17 would be part of the business records of SLS?

18 A: Yes. Bailee letters are business records of
19 any servicer with a Bailee letter directly
20 related to a specific loan that ---

21 Q: Okay. So, it -- this Bailee letter, is it
22 dated?

23 A: Yes.

24 Q: What's the date on it?

25 A: April 20, 2018.



1 Q: Is it -- what -- what's at the very top of the
2 letter?

3 A: There is a letterhead.

4 Q: What's -- what's the let- -- what does it --
5 the letterhead state?

6 A: Crawford & von Keller, LLC. And their Post
7 Office Box 4216, Columbia, South Carolina
8 29240.

9 Q: Okay. And is the letter addressed to anyone?

10 A: Yes. To Stern & Eisenberg Southern, 1709
11 Devonshire Drive, Columbia, South Carolina,
12 2924 -- apologize -- 29204.

13 Q: And does it -- does the letter state what it's
14 regarding?

15 A: Yes. Re: Wilmington Savings Bank vs. Jamie
16 Singleton. And it has a case number.

17 Q: And would you read the case number, please?

18 A: Yes. 2011-C- -- -CP-18-00871.

19 Q: And -- and would you read the contents of the
20 letter?

21 A: To Whom It May Concern. Enclosed please find
22 the original note, mortgage and CD from Rogers,
23 Townsend & Thompson [sic]. Sincerely,
24 Stephanie H. Harmon, Paralegal.

25 Q: Okay. And is there anything else written on



1 this letter?

2 A: Yes. I confirm that Crawford & von Keller have
3 released the original note, mortgage and CD to
4 our office and it is now in our possession."
5 And, there's a signature above the name ---

6 Q: Okay.

7 A: --- Alexis Dickey, dated 4/23/2018. Well, just
8 4/23/18.

9 Q: Okay. And you said this is something from your
10 business records?

11 A: Yes I have the copies ---

12 **OBJECTION:**

13 **MR. SLOAN:** Objection; leading. I'm sorry.

14 **MR. HAYES:** He ...

15 **THE COURT:** Mr. Sloan, I've warned you once. This
16 is the second warning. If you can't resist
17 standing up, I'm going to have to ask you to
18 step out. So, that would put Mr. Barnes in
19 quite some jeopardy because you are his pro hac
20 vice sponsor. Okay?

21 Q: Where did this document come from, Plaintiff's
22 Exhibit Number 14?

23 A: There's copies in my business records, and the
24 original is as stated from Crawford & von
25 Keller, LLC. to Stern & Eisenberg Southern.



1 Q: Okay.

2 MR. HAYES: Your Honor, I move that Plaintiff's
3 Number 14 be admitted into evidence.

4 (Plaintiff's Exhibit Number 14 was offered into
5 evidence.)

6 OBJECTION:

7 MR. BARNES: I -- I would object on the basis of
8 hearsay, Your Honor, because I didn't hear the
9 business records colloquy he testified to.

10 MR. HAYES: Well, it's -- I asked ---

11 THE COURT: He did state that it was a part of his
12 business records. You -- you may not have
13 heard that, but he said this is part of the
14 business records that they have at -- at SLM --
15 or ---

16 A: SLS, Your Honor.

17 THE COURT: SLS.

18 MR. BARNES: But -- I'm sorry your -- my
19 understanding of --and, there's more to the
20 803(6) qu- -- colloquy than just saying they're
21 part of our business records.

22 MR. HAYES: Well, as he ---

23 MR. BARNES: Counsel went through it on the earlier
24 exhibits.

25 THE COURT: Right.



1 **MR. HAYES:** I mean, I didn't think if -- if this is
2 part of his business record, I don't think I
3 had to go through it on every single one of
4 them. If the Court wants me to, I will.

5 Q: Mr. Amaya ---

6 **MR. BARNES:** Reason being is I'm going to cross him
7 on it.

8 Q: --- in -- in the normal course of business,
9 does ---

10 **THE COURT:** At the sixth of -- no, it's our five of
11 them that you have to cover ---

12 **MR. HAYES:** I'm sorry?

13 **THE COURT:** I think there's five or six of them that
14 you have to cover for it to be accepted under
15 the business records rule.

16 (Laughter.)

17 **THE COURT:** Foundational policies.

18 Q: I- -- in the normal course of business, does
19 SLS maintain records of the loans that it
20 services?

21 A: Yes.

22 Q: Okay. Do entries in -- are entries in those
23 records made at or near the time the
24 transaction occurs?

25 A: Yes. They were made at or near the time.



1 Q: Okay. And is the information entered into SLS'
2 system by a person with knowledge of the
3 transaction?

4 A: Yes.

5 Q: Okay.

6 **MR. HAYES:** Your Honor, I -- I move -- and ...

7 Q: And is this Bailee letter part of the records
8 of SLS?

9 A: Yes.

10 Q: Okay.

11 **MR. HAYES:** Your Honor, I move that it be admitted
12 into evidence as Plaintiff's Exhibit Number 14.
13 **(Plaintiff's Exhibit Number 14 was offered into**
14 **evidence.)**

15 **THE COURT:** Under the business records exception?

16 **MR. HAYES:** Yeah. Business re- -- 803(6), Your
17 Honor.

18 **THE COURT:** Any objections?

19 **MR. BARNES:** Not at this point.

20 **THE COURT:** So, this is admitted as Exhibit Number
21 14 without objection from the defendant.

22 **(Plaintiff's Exhibit Number 14 was admitted into**
23 **evidence.)**

24 **MR. HAYES:** Okay.

25 Q: Mr. -- Mr. Amaya, the ...



1 **MR. HAYES:** Hold on a second, Your Honor.

2 Q: Mr. Amaya, page 2 of this document -- would you
3 look at page 2?

4 **THE COURT:** You're talking about Exhibit 14?

5 **MR. HAYES:** Yeah. I'm sorry. I'm sorry, Your
6 Honor. Yes, sir. Of Exhibit 14 ---

7 **THE COURT:** Page 2, Exhibit 14. It's -- there are
8 only two pages, that's why I asked you.

9 **MR. HAYES:** Yes, sir.

10 Q: And, this -- this appears -- I mean, it -- it
11 says loan number 1- -- well, what does the loan
12 number say on it?

13 A: 147395.

14 Q: Okay. Is there a borrower listed?

15 A: Yes.

16 Q: Okay. Who is the borrower listed?

17 A: Kaney.

18 Q: Okay. Is this -- is there a date on it?

19 A: Yes. 9/18/2019.

20 Q: Okay. Well, the -- the first page says -- I
21 think you testified it said Wilmington Savings
22 Bank vs. Jamie Singleton.

23 A: Yes.

24 Q: And, this -- the borrower is listed as Kaney.
25 Can you explain that one?



1 A: Yes. Someone attached the wrong list to the
2 letter that already says what's included in it.

3 Q: Okay, okay. All right.

4 **(Plaintiff's Exhibit Number 15 was marked for**
5 **identification purposes).**

6 Q: I'm handing you what's been marked as
7 Plaintiff's Exhibit Number 15. Can you
8 identify Plaintiff's Exhibit Number 15?

9 A: Yes. It is a Bailee letter.

10 Q: Okay. Is it a Bailee letter that came from the
11 records of SLS?

12 A: Yes, there are copies of this Bailee letter in
13 our business records.

14 Q: Okay. Is the Bailee letter addressed to
15 anyone?

16 A: To Marc B. Ledesman -- Ledesma, Waterfall Asset
17 Management, LLC, 1251 Avenue of the Americas,
18 50th Floor, New York, New York 10020.

19 Q: Is there a servicer -- is there a loan number
20 on it?

21 A: Servicer Loan Number 43608. Borrower name
22 Singleton, Jamie. And the property address,
23 5505 Rowsham PI [sic], North Charleston, South
24 Carolina 29418.

25 Q: Okay. Would you read the -- the Bailee letter,



1 please?

2 A: What?

3 Q: Read the -- the next -- read until I ask you to
4 stop.

5 A: Dear Sir/Madam. SitusAMC has been engaged --
6 engaged for Bailee oversight on behalf of
7 Waterfall Asset Management, LLC, the owner of
8 the loan referred [sic] above. The following
9 original documents are being delivered to your
10 office for purpose related to foreclosure or
11 bankruptcy.

12 Q: Okay. Is anything -- does -- does Plaintiff's
13 Number 15, does it indicate anything about what
14 if any original documents are being delivered?

15 A: Yes. There are markings of Xs next to original
16 note, original lost note affidavit, original
17 endorsement(s)/allonge(s). Please see list
18 [sic]. And there is a list of an endorsement
19 from People's Choice Home Loans, Inc., a
20 Wyoming Corporation to blank; allonge from GMAC
21 Mortgage, LLC to 50 by 50 REO, LLC; allonge
22 from FRT 2011-1 Trust to FRT 2013-1 Investor,
23 LLC; allonge from FRT 2013-I (sic) Investor LLC
24 to blank; allonge from Wilmington Savings Fund
25 Society, FSB d/b/a Christiana Trust, not in its



1 individual capacity but solely in its capacity
2 as a Certificate Trustee for NNPL Trust Series
3 2012-1 to Waterfall Victoria Grantor Trust
4 Series G; an allonge from Wilmington Savings
5 Fund Society, FSB d/b/a Christiana Trust, not
6 in its individual capacity but solely in its
7 capacity as Certificate Trustee for NNPL Trust
8 Series 2012-34 to WestVue NPL Trust II.
9 There's also a marking next to original
10 recorded mortgage, an X next to original
11 recorded assignments, please see list. The
12 list includes MERS, M-E-R-S, Inc. as nominee
13 for People's Choice Home Loan, Inc. to GMAC
14 Mortgage, LLC, recorded July 22, 2008, Book
15 6727, pages 330 through 331; GMAC Mortgage, LLC
16 to 50 by 50 REO, LLC, recorded September 14,
17 2011, Book 8010, pages 230 through 231; 50 by
18 50 REO, LLC to HS -- I'm sorry -- US Bank,
19 N.A., as Trustee for the FRT 2011-1 Trust,
20 recorded October 2nd, 2012, Book 8483, pages
21 135 through 136; US Bank N.A., as Trustee for
22 the FRT 2011-1 Trust to Wilmington Savings Fund
23 Soc for NNPL Trust Series 2012-1, recorded
24 March 7, 2016, Book 10126, pages 197 through
25 199.



1 On the next page, there's an X marked to
2 original unrecorded assignments please list.
3 And the list includes FRT 2011-1 Trust to FRT
4 2013-1 Investor, LLC; and FRT 2013-1 Investor,
5 LLC to Wilmington Savings Fund Society, FSB
6 d/b/a Chris- -- Christiana Trust, not in its
7 individual capacity but solely in its capacity
8 as Certificate Trustee for NNPL Trust Series
9 2012-1; Cascade Funding Mortgage Trust 20- --
10 2017-1 to US Bank Trust, N.A. as Trustee for
11 Cascade Funding Mortgage Trust 2017-1. And the
12 last marked one is for original title policy.

13 Q: Okay. Would you read the next two paragraphs,
14 please?

15 A: Yes. Please sign and date this letter in the
16 space provided below acknowledging your receipt
17 and current possession of the collateral
18 document for the mortgage loan and return via
19 email to Bailee@situs -- let me spell it out --
20 S-I-T-U-S-A-M-C.com. The loan documents for
21 the mortgage loan referred above are to be held
22 by you as bailee for the benefit of the owner,
23 and subject to the owner's ex- -- exclusive
24 direction and control. You are not to deliver
25 any such loan documents to any third party



1 without the prior written consent of the owner,
2 servicer or SitusAMC on behalf of Waterfall.
3 By confirming your possession of the loan
4 documents, you are the custodian, agent, and
5 bailee for the owner in respect to tho- --
6 those loan documents in accordance with the
7 terms of this letter.

8 Q: That -- that's enough. Does this Plaintiff's
9 Number 15 appear to be signed?

10 A: Yes.

11 Q: Who does it appear to be signed by?

12 A: On the third page, there is a signature above
13 the name Tamika Cromer.

14 Q: Okay. Is there a date ---

15 A: Yes.

16 Q: --- on this document?

17 A: Sa- -- date 10/27/2020, received on 10/20/2020.

18 Q: Okay. Is there a company listed here?

19 A: Yes. Company, McMichael Taylor Gray, LLC.

20 Q: Okay. So, what does this -- this letter,
21 Plaintiff's Number 15, indicate to you?

22 A: That the original collateral file was sent to
23 McMichael.

24 Q: Okay. McMichael?

25 A: Taylor Gray, LLC.



1 Q: Okay. And I think you said that SLS in its
2 normal -- regular course of business maintains
3 records of Bailee letters?

4 A: Yes. We keep and maintain those records and we
5 also make them when necessary for us to make
6 them.

7 Q: Okay. Are the records for the Bailee letters
8 kept -- are the transactions for the Bailee
9 letters, are those entered into the record --
10 the business records of SLS at or near the time
11 of the occurrence?

12 A: Yes.

13 Q: Okay. Are the -- the transactions entered into
14 SLS' records by someone with knowledge of the
15 transaction?

16 A: Yes.

17 Q: Okay.

18 **MR. HAYES:** Your Honor, I move that Plaintiff's
19 Number 15 be admitted into evidence.

20 **(Plaintiff's Exhibit Number 15 was offered into**
21 **evidence.)**

22 **THE COURT:** Objection?

23 **MR. BARNES:** Not at this point.

24 **THE COURT:** All right. Exhibit 15 entered without
25 objection.



1 (Plaintiff's Exhibit Number 15 was admitted into
2 evidence.)

3 MR. HAYES: Thank you, Your Honor. 16, I believe.
4 (Plaintiff's Exhibit Number 16 was marked for
5 identification purposes.)

6 MR. BARNES: Your Honor, Mr. Hayes has handed me 13
7 pages stapled together, which appear to be --
8 I'm using a -- and they're two-sided, by the
9 way. They appear to be some generic form of
10 payment history or payment records.

11 THE COURT: Thank you, Mr. Barnes.

12 MR. BARNES: Sure.

13 Q: Have you been given Plaintiff's Number 16, Mr.
14 Amaya?

15 A: Yes.

16 Q: Okay. Can you identify that document?

17 A: Yes. This is a payment history of -- payment
18 history from prior servicers for the loan in
19 question.

20 Q: Okay. Do you know which payment -- which prior
21 servicer it came from?

22 A: There is a portion that is from GMAC.

23 Q: Okay.

24 A: And this -- there is also ...

25 THE COURT: Can you identify what -- what page



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you're referring to, the GMAC page?
A: Yes, Your Honor. Starting on page -- the second page -- not the back of the first, but starting on the second page. It -- that loan actually has the prior servicer's name on it.
THE COURT: Okay.
A: So, that's GMAC that goes through on to 3, and the front of page 4.
THE COURT: I'm gonna have you do those tags. Would you take a pen and number ---
MR. HAYES: Yes, sir.
THE COURT: --- these -- 1 of 1, and 2 of 2 -- 2 of ...
MR. HAYES: Yeah. We should've done that. I apologize, Your Honor.
THE COURT: It just ---
MR. HAYES: That's correct.
THE COURT: --- it's almost impossible for a record of this many pa- -- pages of documents without them being Bates stamped.
MR. HAYES: I -- I -- I agree.
THE COURT: While you do that, I'm gonna take a little break.
MR. HAYES: Okay. Thank you.
THE COURT: My lunch has caught me.

1 (Laughter.)

2 (Off the record from 2:52 p.m. until 3:05 p.m.)

3 MR. HAYES: I didn't know the Court was waiting on
4 me. I apologize.

5 THE COURT: Go ahead.

6 MR. HAYES: I think this is Plaintiff's Number ---

7 A: 16.

8 Q: 16. Yeah. Mr. Amaya, can -- I think I asked
9 this before, but can you identify Plaintiff's
10 Exhibit Number 16?

11 A: Yes. It's a payment history from prior
12 servicer GMAC.

13 Q: Okay. And by -- by payment history, what do
14 you -- what -- would you explain that?

15 A: Debits and credits applied to a loan. The
16 payment history shows any payments that are
17 sent out or any payments that are received, a
18 debit or credit. It's an accounting of monies
19 received or paid out for a specific loan.

20 Q: Okay. And when -- when you receive records
21 from prior servicers, what -- what form are
22 those records usually in?

23 A: Records come in multiple formats.

24 Q: I think I asked you this before.

25 A: The different formats depend on the different



1 kind of records. We will have data digital
2 information, which means information that is
3 computerized information. We will have imaged
4 information, image documents. And we will also
5 get original documents, actual physical
6 documents. Depending on the type of business
7 record that it is, it could also come in
8 multiple formats. Some business records come
9 both digital and imaged, and some of the
10 imaging can be printed in different formats
11 depending on the type of document that it is.

12 Q: Okay. The -- you said this is a payment
13 history?

14 A: Yes.

15 Q: What format would this document have -- or this
16 information have been sent to you? Sent to
17 SLS?

18 A: This comes both data digital and imaged when a
19 printed format of the payment history has been
20 created.

21 Q: Would -- would you explain data imaging?

22 A: Yes. Okay. The data digital means we receive
23 the numbers, we receive the accounting in a
24 digital format almost -- let's say like a
25 floppy disc -- you plug it in and then it fills



1 into your system and plugs in the numbers.
2 That information can sometimes be printed out
3 and it'll look like an Excel format. A payment
4 history also comes in imaged formats, because
5 there are certain kinds of payment histories
6 they -- printed out. And when you print it
7 out, you have a specific kind of document.
8 You'll have, like, archived payment history.
9 Some systems, like MSP, you can view a few
10 years on the system; anything else goes into
11 archived. So, even when you print it out, it
12 looks different, because your archived is gonna
13 look different than what you have for your two
14 years. Your two years might look a little bit
15 more like an Excel, or like a long sheet, while
16 your archived is yearly based. You'll have a
17 year and all the transactions for the year. A
18 year, and all the transactions for the year.
19 In addition to that, since we get the data
20 digital information, you'll have, I don't wanna
21 say an Excel, but the easiest way to explain it
22 -- the information comes digitally, all the
23 numbers, and when you pull it, it gets a -- put
24 into your system, so it fills in all your
25 numbers. And if you were to print that



1 information, that comes out looking like an
2 Excel spreadsheet. It would have the
3 categories of what the information is and be
4 filled in, as in a transaction date. It'll
5 have a row for transaction dates, so you'll
6 have all your transaction dates. And your due
7 date, and you'll have all your due dates. And
8 principal, interest, you'll have these
9 categories in the row, and it'll be filled in
10 by the information that was received, the
11 actual digital information received from the
12 prior servicer.

13 Q: Okay. The -- is the -- so, when do you get
14 this information?

15 A: Prior ---

16 Q: When does SLS get this information?

17 A: In -- prior to servicing the loan, the
18 information is received and it's incorporated
19 into our business records.

20 Q: Okay. Is the -- you said it's incorporated
21 into the business -- you're -- it's
22 incorporated into SLS's business records, is
23 that what you meant?

24 A: Yes. And the information is also imported into
25 our system depending on the data digital



1 information, whether it's directly -- if it can
2 directly be connected to our servicing platform
3 from the prior's platform, or if it has to be
4 merged into it.

5 Q: Okay. Can you tell from this Plaintiff's
6 Number 16 how this one came to SLS?

7 A: Well, these are ...

8 Q: How the information ---

9 A: Yeah.

10 Q: --- not the document itself.

11 A: Well, these would've come both data digital and
12 printed, because this is an archived payment
13 history that is printed -- sorry -- starting on
14 page 3 of 25 through page 9 of 25, that's
15 what's considered archived payment history.
16 Now, this is the format you would see it in
17 after it's been printed out in its yearly
18 breakdowns. Page 1 and 2 is a print screen
19 from the corporate advance pay- -- portion of
20 the payment history for that specific time
21 frame. And the final formatting, which begins
22 on page 10 of 25 and goes through 25 of 25, is
23 that digital information as I explained it,
24 that it would look almost as a Excel
25 spreadsheet where you would have your column --



1 your rows and your columns. Your rows are
2 identified to be a specific category -- no,
3 sorry -- your columns are a specific category
4 and each row is a different transaction.

5 Q: Okay. Okay. And in SLS' regular course of
6 business, do they get this information from
7 other service- -- from prior servicers?

8 A: Yes. When we start servicing a loan, we
9 receive their prior servicer's information.

10 Q: Okay. Is this information entered into SLS'
11 system at or near the time that you start
12 servicing the loan?

13 A: Yes.

14 Q: Is the information received by SLS by someone
15 with knowledge of -- of how to receive the
16 information?

17 A: Yes.

18 Q: Okay. And you -- I think you said this is
19 incorporated into the -- the records of SLS.
20 Does SLS rely on this information?

21 A: Yes, we do.

22 Q: Okay. D- -- does -- did the information
23 received from GMAC appear to be accurate and
24 complete?

25 A: Yes.



1 Q: Okay.

2 **MR. HAYES:** Your Honor, I move that Plaintiff's
3 Number 16 be ad- -- moved -- admitted into
4 evidence.

5 **(Plaintiff's Exhibit Number 16 was offered into
6 evidence.)**

7 **THE COURT:** Objection?

8 **MR. BARNES:** No objection.

9 **THE COURT:** 16 is admitted.

10 **(Plaintiff's Exhibit Number 16 was admitted into
11 evidence.)**

12 Q: Mr. Amaya, could you tell me what time period
13 this payment history is from and until?

14 A: Yes. This payment history is -- the data
15 digital one that I said begins in page 10 is
16 from 7/7/2009 through 9/27/2010. The archived
17 format has on page 3 of 25, that is the year of
18 2009 and it goes through page 5 of 25. That is
19 a -- the archived year of 2009.

20 Q: Okay.

21 A: And starting on page 6, you have the year of
22 2008. That one ends on page 8. And page 9 is
23 the year of 2007.

24 Q: Okay. And what is the principal balance at the
25 start of the period?



1 A: Let's go to the oldest form ...

2 **THE COURT:** Which period?

3 Q: I'm sorry. Does this show that the principal
4 balance when SLS -- well, excuse me, this is
5 from GMAC, I apologize. My -- my -- would you
6 go over the principal balance at the end of the
7 period, the end of the latest period?

8 A: Well, it started in 2007 with a principal
9 balance of \$210,248.59. By the end of 2009 ...
10 when does it end? Through 2010. You want me
11 to then just skip all the way to the end of
12 2010 or you want me to read through the ...

13 Q: Yeah, if you want to go just to the end of the
14 time period, that's fine. The end of the time
15 period shown by this Plaintiff's Exhibit Number
16 16.

17 A: Okay. At the end of 2009, I see \$209,656.89.

18 Q: Okay. And is that the end of the time period
19 shown on this document marked as Plaintiff's
20 Exhibit Number 16?

21 A: That is the last total principal balance that
22 I can identify on it.

23 Q: Okay.

24 A: I believe this goes into a part of 2010, but
25 not all of 2010.



1 Q: Okay.

2 COURT REPORTER: 17?

3 MR. HAYES: Yeah, 17.

4 (Plaintiff's Exhibit Number 17 was marked for
5 identification purposes.)

6 A: I found the end of 2010.

7 Q: Okay. What was it?

8 A: It is on page 16 of 25.

9 Q: Okay.

10 A: \$208,818.11.

11 Q: Okay. 208,818.11. Okay.

12 THE COURT: W- -- what -- what date is that?

13 A: Hold on one second, I'm going -- the way it's
14 printed out is tricky. That is transaction
15 date -- it took so long to find. I have a
16 transaction date of 9/27/2010, showing that
17 principal balance. And that was for a ---

18 THE COURT: So ---

19 A: --- regular payment ---

20 THE COURT: Let me -- let me see if I've got this
21 straight. If -- if I were to pull 10 of 25
22 here, and 17 of 25, or 19 of 25, or 21 of 25,
23 23 of 25, if we begin on 10, you have a history
24 accounted, and that's in numerically descending
25 order.



1 A: Yes, Your Honor.

2 **THE COURT:** What -- would -- would this -- would --
3 would the place ---

4 A: I can explain it to you.

5 **THE COURT:** Is it like a spreadsheet out like this
6 (indicating)?

7 A: Yes and no. And -- and it's only page 10 and
8 page 11. Page 11 goes under page 10.

9 **THE COURT:** Okay.

10 A: And following that, every two pages are, as you
11 said, Your Honor, next to it. The next two
12 pages are top and the bottom, then the next two
13 are top and bottom.

14 **THE COURT:** All right. Let me see if I got this
15 straight. Say that again -- 10?

16 A: 10 and 11 are the first set of rows.

17 **THE COURT:** Rows. Okay.

18 A: Yes. See from transaction 1 through
19 transaction 88.

20 **THE COURT:** Right.

21 A: Then pages 12 and 13 go next to it, it's the --
22 the -- the row continuing.

23 **MR. HAYES:** Yes, sir.

24 A: Like that, next to it will be the continuing
25 row. So, if you look at page 13 at the bottom,



1 the one that's highlighted, that is transaction
2 1, 2, 3, working its way up. And the first one
3 on page 12 is the 88 transaction.

4 **THE COURT:** Okay. So, every two pages would ... It
5 looks like the odd pages go -- are -- are a
6 continuation of the even pages?

7 A: Yes, Your Honor. At the bottom of the ---

8 **THE COURT:** At the bottom.

9 A: Yes.

10 **THE COURT:** They continue at the bottom.

11 A: Yes.

12 **MR. HAYES:** Thank you, Your Honor.

13 Q: Mr. Amaya, have you been given what's been
14 marked as Plaintiff's 17?

15 A: Yes.

16 Q: Okay.

17 **MR. BARNES:** For the record, Your Honor, Mr. Hayes
18 handed me another one of these series of
19 double-sided documents. This time, left --
20 long way left to right instead of up and down.
21 Titled -- styled Shellpoint Mortgage Servicing.
22 I'm assuming that they go in order of 1 and
23 then 2 is the back of 1, 3, and then 4 is the
24 back of 3, etcetera, etcetera.

25 **MR. HAYES:** There -- the way its shown, yes, it goes

